

## **STIPULATED SETTLEMENT**

This Stipulated Settlement (“Settlement”) is entered into by the parties set forth below for the purpose of completely resolving Case No. 272380 – Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, Superior Court, State of California, County of Tulare, Visalia Division, challenging the certification by the County of Tulare of the Environmental Impact Report for the Animal Facilities Confinement Plan and related General Plan Amendments Zone Changes, and Dairy and Feedlot Climate Action Plan.

This Settlement is made and effective this 2<sup>nd</sup> day of August 2019 (the “Date of Execution”) by and among all parties to Case No. 272380, namely the Sierra Club, Association of Irritated Residents and Center for Biological Diversity (collectively “Petitioners” or “Plaintiffs”) and the County of Tulare, a political subdivision of the State of California and the Board of Supervisors of the County of Tulare (collectively “County”).

Sierra Club, Association of Irritated Residents and Center for Biological Diversity and County are collectively referred to herein as the “Parties” and individually as a “Party.” This Settlement is intended to resolve the outstanding legal disputes between the Parties without further litigation and serve in lieu of any determination by the Court as to the merits of Petitioners’ allegations in the case.

### **RECITALS**

**WHEREAS**, Sierra Club is a California non-profit environmental organization;

**WHEREAS**, Association of Irritated Residents is a California non-profit, public interest corporation;

**WHEREAS**, Center for Biological Diversity is a California non- profit, public interest corporation;

**WHEREAS**, the County of Tulare is a political subdivision of the State of California and a public entity organized and existing under the laws of the State of California, and the Tulare County Board of Supervisors (“County Board”) is the governing body of the County;

**WHEREAS**, Petitioners filed a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in Superior Court, Visalia Division in the State of California Superior Court, County of Tulare against County on January 11, 2018, which Petition is designated as Case No. 272380 (“Litigation”) generally challenging the certification by the County of Tulare of the Environmental Impact Report (“EIR”) for the Animal Confinement Facilities Plan and related General Plan Amendments and Zone Changes (collectively “ACFP”), and Dairy and Feedlot Climate Action Plan (“Petition”);

**WHEREAS**, on December 12, 2017, the County Board certified the EIR (State Clearinghouse No. 20111111078) prepared by the County under the California Environmental Quality Act (“CEQA,” Public Resources Code Section 21000 et seq.), which analyzed the environmental impacts of the ACFP, Dairy and Feedlot Climate Action Plan (“Dairy and Feedlot

CAP") and related zoning ordinance amendment and criteria/standards resolution implementing the ACFP;

**WHEREAS**, on December 12, 2017, County Board adopted Resolution 2017-1061/Ordinance No. 3522 certifying the ACFP EIR and adopting the CEQA Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the ACFP, Dairy and Feedlot CAP;

**WHEREAS**, on December 12, 2017, County Board also adopted Resolution No. 2017-1062/Ordinance No. 3522 adopting General Plan Amendment No. 10-002 and Zoning ordinance amendment No. PZC 17-040 for the ACFP, and Dairy and Feedlot CAP;

**WHEREAS**, on December 12, 2017, County Board also adopted Resolution No. 2017-1063/Ordinance No. 3522 adopting the criteria and standards to be used in the administrative review and approval of special use permits pertaining to certain compliant bovine facilities;

**WHEREAS**, the County and dairy and feedlot operators in the County have been participating in the implementation of Senate Bill 1383 "Short-lived climate pollutants: methane emissions: dairy and livestock: organic waste: landfills" ("SB 1383") focused on reducing short lived climate pollutants, including greenhouse gases associated with methane emissions from dairy and feedlot operations, and based on initial data collected and analyzed by the County are understood to have achieved greenhouse reductions since initiation of this Litigation, and seek to continue to do so through the implementation of the Dairy and Feedlot CAP and SB 1383;

**WHEREAS**, by entering into this Settlement Petitioners are not endorsing digesters as the appropriate means of reducing greenhouse gas emissions associated with dairy and feedlot operations and maintain concerns regarding the environmental impacts of digesters for dairy and feedlot operations;

**WHEREAS**, the Parties have mutually agreed that settlement is the most efficient and practical way to resolve the Litigation. Without any Party admitting or denying the truthfulness of any of the allegations or claims raised between and among the Parties and without accepting any liability arising out of such claims, the Parties now intend to settle the Litigation in its entirety on the terms and conditions set forth in this Settlement;

**WHEREAS**, the Parties have negotiated in good faith and agreed to the terms of this Settlement, including the Attachments attached hereto.

### **STIPULATED SETTLEMENT PROVISIONS**

**NOW, THEREFORE**, in consideration of the mutual benefits of this Settlement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### **I. INCORPORATED BY REFERENCE**

(1) The recitals set forth above are true and correct and incorporated by this reference as if set out in full.

(2) The attachments referred to in and attached to this Settlement are incorporated by this reference as if set out in full.

## **II. PURPOSE**

(1) This Settlement is intended to completely settle the Litigation, as provided herein.

## **III. SETTLEMENT OVERVIEW**

### **A. No Admission of Liability**

(1) This Settlement is entered into by the Parties without any admission of liability by any Party.

### **B. Mutual Consideration**

(1) The commitment by Petitioners to abide by the terms of this Settlement is consideration for County's commitment to abide by the terms of this Settlement. County's commitment to abide by the terms of this Settlement is consideration for the commitment by Petitioners to abide by the terms of this Settlement.

## **IV. TERMS**

### **A. Existing Dairies**

(1) County shall hire at least one Full-Time Equivalent ("FTE") person(s) for FY 2019 through FY 2024 (July 1, 2019 through June 30, 2025) dedicated to monitoring and enforcing the ACFP. Work tasks shall include the following:

(a) Develop and maintain ACFP list.

(b) Track existing dairies' compliance with the ACFP, Greenhouse Gas ("GHG") reduction measures, mitigation measures, and any permit conditions required by the San Joaquin Valley Air Pollution Control District ("SJVAPCD") and/or Central Valley Regional Water Quality Control Board ("CVRWQCB") by their regulations specified in Permits to Operate ("PTO") and Waste Discharge Requirements ("WDR"), respectively, applicable to GHG reductions.

(c) Track estimated GHG emission reductions achieved during reporting period.

(d) If any dairy is found to be out of compliance with the ACFP, then the FTE will forward the noncompliance information to SJVAPCD and/or CVRWQCB.

(e) Initiate Code Enforcement actions for dairies out of compliance with the ACFP including, as necessary: 1) Initial notice, 2) subsequent warning, 3) preparation of informal or formal Corrective Action Plans to achieve compliance with County regulations and/or conditions of approval and if necessary, 4) seek administrative

penalties pursuant to the Ordinance Code of Tulare County (“TCOC”), Part I, Chapter 23 and/or a public nuisance abatement pursuant to TCOC, Part IV, Chapter 1.

(f) Perform site inspections of at least 15 % of dairies every fiscal year, on a rolling basis, with the inspection focused on status of GHG reduction measures in place.

(g) Report all enforcement and inspection actions as well as any reports of noncompliance with applicable County permits, rules and regulations from the prior year to the County Board as part of Annual, Interim, and Final Reports pursuant to Sections IV.B.1 through IV.B.3, respectively, below.

(h) The above provisions in this section will automatically expire upon the State’s implementation of SB 1383 regulations or by May 1, 2025, whichever occurs first.

## **B. Existing Dairies Plus New and Expanding Dairies**

### **1. Annual Report**

(1) County shall prepare an Annual Report of total dairy GHG emissions from FY2019-FY2024, except as provided in Section IV.B.2 (“Interim Report”) and Section IV.B.3 (“Final Report”) below. The Annual Report shall include:

(a) Total estimated dairy GHG emissions reduced to date compared to the 1.05 million metric tons/yr by 2023 Dairy and Feedlot CAP reduction goal as exemplified on Attachment B (Figures 1 and 2, and Table 1), and the total dairy GHG emissions reduced to date compared to the maximum projected SB 1383 potential target as exemplified on Attachment B (Figures 3 and 4, and Table 2). GHG emissions shall be represented as graphical figures substantially similar to those provided in Attachment B.

(b) Report on the State’s measures pursuant to SB 1383, including but not limited to digester funding and the Alternative Manure Management Program (“AMMP”).

(c) To the extent information is available in County files or from information provided on the California Air Resources Board’s (“ARB”), California Department of Food and Agriculture’s (“CDFA”), or United States Environmental Protection Agency AgSTAR (“EPA AgSTAR”) websites, an Updated Digester Project list for digesters within the County that lists: the operation name; project title; total project cost; CDFA funding award; additional Federal or State public funding awards; project description; project construction stage; location; GHG emission reductions over ten years; and how captured methane is being used. The report shall also include any reported problems with completed digesters within the County to the extent such information is available in County files or information provided on ARB’s, CDFA’s, or EPA AgSTAR’s website.

(2) The Annual Report shall be completed by May 1 each year, beginning in 2020, and made available to the public (through the County website). The County shall hold a public meeting on the Annual Report and the County Board shall provide the Annual Report to the

public not less than ten (10) calendar days prior to a duly-noticed public meeting, where the report is considered by the Board following a staff presentation and opportunity for public comments.

(3) The above provisions in this section will automatically expire upon the State's implementation of SB 1383 regulations or by May 1, 2025, whichever occurs first.

## **2. Interim Report**

(1) County shall prepare an Interim Report (in lieu of an Annual Report) for 2021. The Interim Report shall include:

(a) Total number of permitted dairies and feedlots in the County, number and type of animal waste management system, number of permitted cows provided on the ACFP list, total estimated dairy GHG emissions in 2020 and GHG reductions achieved since 2013.

(b) Total estimated dairy GHG emissions reduced to date compared to the 1.05 million metric tons/yr by 2023 Dairy and Feedlot CAP reduction goal as exemplified on Attachment B (Figures 1 and 2, and Table 1), and the total dairy GHG emissions reduced to date compared to the maximum projected SB 1383 potential target as exemplified on Attachment B (Figures 3 and 4, and Table 2).

(c) Summary of the State's GHG-reduction recommendations or required measures pursuant to SB 1383 including but not limited to digester and AMMP funding.

(d) Staff recommendations regarding additional, different or modified measures or programs ("adaptive management") to further reduce GHG emissions, especially if the data analyzed in Section IV.B.2.b suggests the County is not in line to meet reduction target of 1.05 million metric tons/yr by 2023 Dairy and Feedlot CAP or SB 1383 reduction targets.

(e) Information required in the Annual Report not otherwise listed in this section.

(2) The Interim Report shall be completed by May 1, 2022 and be made available to the public (through the County website). The County shall hold a public meeting on the Interim Report and the County Board shall provide the Interim Report to the public not less than ten (10) calendar days prior to a duly-noticed public meeting, where the Board shall consider the Interim Report following a staff report and opportunity for public comments.

## **3. Final Report**

(1) County shall prepare a Final Report (in lieu of an Annual Report) after the State issues its final SB 1383 report, should the State issue such a report.

(a) The Final Report shall include the State's "final" report prepared pursuant to SB 1383 or the State's most recent SB 1383 annual report, updated items provided in the County's Interim Report, any recommendations resulting from SB 1383 regulatory process, and information required in the Annual and Interim Report not otherwise listed in this paragraph.

(b) County Board shall consider any post-2024 recommendations from the State's "final" report prepared pursuant to SB 1383 at a public hearing with advance notice to the public to allow at least thirty (30) calendar days for the public to submit written comments.

(c) County shall complete and make available for public review the Final Report within one year after the State issues its "final report" or by May 1, 2025, whichever is earlier. County shall present the Final Report to the public and County Board at a public hearing.

#### **4. ACFP/CAP Implementation Webpage**

(1) County shall develop and update an ACFP/Dairy and Feedlot CAP implementation webpage to publicly post relevant information including, but not limited to:

(a) ACFP and Dairy and Feedlot CAP and any amendments thereto, and associated planning and environmental review documents pertaining to the ACFP and Dairy and Feedlot CAP.

(b) Annual, Interim and Final Reports outlined in this Settlement.

(c) The County Resource Management Agency website will also provide a link to the ACFP/ Dairy and Feedlot CAP implementation webpage.

(d) The above provisions in this section will automatically expire upon the State's implementation of SB 1383 regulations or by May 1, 2025, whichever occurs first.

### **C. New and Expanding Dairies**

#### **1. Streamlining Expanding Dairies**

(1) Amendment to Dairy and Feedlot CAP and ACFP:

(a) County Board shall consider adoption of an amendment to the Dairy and Feedlot CAP and ACFP as set forth in Attachment A within 12 months of executing this Settlement.

#### **2. If a dairy project does not qualify for streamlining, or is a newly proposed dairy (collectively "Project"), then the following applies:**

(1) CEQA review:

- (a) If County prepares an EIR for the Project, then County shall include a GHG emissions reduction trajectory as informational item only in the EIR.
- (b) If County prepares an EIR or Mitigated Negative Declaration for the Project, then estimated GHG emissions shall be quantified, mitigation measures proposed to reduce GHG emissions shall be quantified, and GHG emissions reduced to the extent feasible pursuant to CEQA.

#### **D. Additional County Efforts**

##### **1. Dairy Mitigation Education Program**

(1) County shall establish a Dairy Mitigation Education Program (“Program”) by March 1, 2020. The Program’s work program shall include:

- (a) Identify and promote methods to reduce GHG emissions from dairy and livestock operations in the County.
- (b) Outreach to dairy industry, including co-sponsoring events regarding ACFP compliance and GHG emissions reductions.
- (c) Conduct two noticed training meetings for dairies on Annual Compliance Report requirements.
- (d) The above provisions in this section will automatically expire upon the State’s implementation of SB 1383 regulations or by May 1, 2025, whichever occurs first.

#### **V. COUNTY PROCESSING AND CONSIDERATION OF PROPOSED ACTIONS**

##### **A. Proposed Actions**

(1) The processing, consideration, adoption, effectuation and/or establishment, if any, of each and every obligation or action contemplated in the Settlement including Attachment A (“Proposed Actions”) shall be in accordance with applicable law, including but not limited to, the Government Code and the Public Resources Code.

(2) Nothing in this Settlement shall be construed as a waiver of the County’s police powers or third parties’ due process rights, if any.

#### **VI. ENFORCEMENT OF SETTLEMENT**

##### **A. Mutual Desire to Avoid Further Litigation and Jurisdiction to Enforce Settlement**

(1) The Parties have entered into this Settlement to avoid litigation. Action to enforce this Settlement is to be brought solely through the procedures set forth in this Section, which are

designed to avoid resorting to court enforcement in the first instance, and, if court enforcement is necessary, then to provide a simple, straight forward and predictable method of enforcement.

(2) In order to provide a simple, straightforward and predictable method of enforcement of this Settlement, the Parties shall request that the Tulare County Superior Court, Visalia Division (“Judicial Officer”) retain jurisdiction of this case solely for the limited purpose of enforcing the mutual promises of the Settlement pursuant to the procedure set forth in this Section.

### **B. Preliminary Enforcement Procedures**

(1) Right to Cure. If any Party believes another Party has not substantially performed one or more of its obligations under this Settlement (also referred to as “default”), then the Party shall provide written notice to the other Party of the alleged default within thirty (30) calendar days of the alleged default; offer to meet and confer in a good faith effort to resolve the issue; and provide the other Party ninety (90) days to cure the alleged default commencing at the time of receipt of the notice of a properly detailed written default notice (“Notice to Cure Default”). The 90-day period to cure shall be tolled if resolution of the issue triggers the need for CEQA compliance or a public hearing. A Notice to Cure Default given pursuant to this Section shall specify in reasonable detail the nature of the alleged default and, where appropriate, the manner in which the alleged default satisfactorily can be cured. In the event the Party providing Notice to Cure Default does not believe the alleged default has been cured pursuant to the cure timeframe above, then that Party shall provide a Supplemental Notice of Default, setting forth in reasonable detail the outstanding basis of the default. The other Party shall have an additional thirty (30) days to cure. The Parties may mutually agree to longer periods of time to cure.

### **C. Judicial Enforcement of Settlement**

(1) Judicial Officer Determination: Subject to the restrictions otherwise set forth in this Settlement, after expiration of the cure period provided in Section VI.B. any Party may request that the Judicial Officer determine whether one Party has not substantially performed its obligations under this Settlement.

(2) Judicial Remedies:

(a) In the event one or more Petitioner(s) allege(s) County has not substantially performed one or more of its obligations under the Settlement and the Judicial Officer concurs, then Petitioner(s) sole remedy is specific performance by County.

(b) In the event County alleges one or more Petitioner(s) have not substantially performed its one or more of its obligations under the Settlement and the Judicial Officer concurs, then County’s sole remedy is specific performance by Petitioner(s).

## **VII. ATTORNEY'S FEES FOR JUDICIAL ENFORCEMENT**

(1) If, following exhaustion of the procedures set forth in Section VI above, the Judicial Officer concurs with Petitioner(s) contention that the County has failed to substantially fulfill one or more of its obligations under the terms of this Settlement, then Petitioner(s) shall be entitled to reasonable attorney's fees. The amount of attorneys' fees shall be decided by the Judicial Officer, based on the total number of hours required to unsuccessfully mediate the issue and the attorney time necessary to litigate the issue before the court. No multiplier shall be awarded.

## **VIII. EFFECT OF MODIFICATION OF PARTY'S POWERS**

(1) In addition to the specific provisions of this Settlement, the County shall not be deemed to be in default if the County's powers are modified by State or Federal legislation, or otherwise in any way that precludes the County from performing its obligations under this Settlement.

## **IX. ATTORNEY'S FEES AND COSTS**

(1) Petitioners have incurred attorneys' fees and costs in litigating and drafting this Settlement.

(a) County will pay to Sierra Club and Association of Irritated Residents \$82,882.50 total for such fees and costs incurred.

(b) County will pay to Center for Biological Diversity \$42,297.50 total for such fees and costs incurred.

(c) Sierra Club, Association of Irritated Residents, and Center for Biological Diversity have submitted records documenting time and expenses and costs incurred on the Litigation and settlement sufficient to demonstrate that the award is reasonable and no multiplier has been applied.

(d) County shall pay said fees and costs to Petitioners in the amount specified above, within sixty (60) days from the date Petitioners file a Request for Dismissal with prejudice pursuant to Section X below.

## **X. DISPOSITION OF THE LITIGATION**

(1) Petitioners shall file in Tulare County Superior Court a Request for Dismissal with prejudice, in a form in substantial compliance with Attachment C, within ten (10) days after the County Board adopts amendments pursuant to Section IV above, including amendments substantially conforming to Attachment A.

(2) Notwithstanding any other provision of this Settlement, Petitioners may dismiss the Litigation with prejudice at any time.

## **XI. THIRD PARTY LAWSUITS**

(1) By entering into this Settlement, all Parties acknowledge it is in their best interest to ensure that the ACFP EIR, ACFP and Dairy and Feedlot CAP and all provisions of this Settlement are upheld against legal challenge by any other party. The County agrees to notify Petitioners within ten (10) business days of being served with any legal challenge to this Settlement, including any legal challenge to any Attachment or related CEQA compliance document to this Settlement. Under all circumstances, the County retains the right to exercise its own discretion and judgment in the defense of a legal challenge. In the event a court of competent jurisdiction rules any part of this Settlement, including any of the Proposed Actions, invalid, then the County shall be relieved of fulfilling its obligations as to that portion or portions of the Settlement, including any of the Proposed Actions, held to be invalid.

## **XII. RELEASE OF CLAIMS**

(1) The Parties intend and agree that this Settlement shall, when fully implemented in accordance with the provisions thereof, be effective as a full and final accord and satisfaction and general release of and from all claims in the Litigation.

Upon execution of this Settlement, and consistent with this Settlement, Petitioners shall be conclusively deemed to have waived and released County, administrators, successors, assigns, agents, employees, officers, partners, directors, consultants, and legal counsel (the "County Released Parties") from all rights, actions, claims, debts, demands, costs, contracts, allegations, liabilities, obligations, and causes of action, whether known or unknown, including the Litigation, at law or in equity, which Petitioners had, or now has as of the Date of Execution of this Settlement, against County Released Parties, or any of them, relating to the certification of the ACFP EIR and approval of the ACFP and related General Plan Amendments, Zone Changes and Dairy and Feedlot CAP as adopted by the County Board on December 12, 2017, including, without limitation, all costs and fees incurred by Petitioners in, or arising from, such actions (the "County Released Claims"). Petitioners shall conclusively be deemed to have waived and relinquished to the fullest extent that they may lawfully do so, all rights and benefits afforded by Section 1542 of the Civil Code of the State of California ("Section 1542"), which states as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTION HIS OR HER SETTLEMENT WITH THE DEBTOR." This release shall not be construed to limit the rights of Petitioners to institute legal action to seek specific performance of this Settlement or to enforce the Settlement as otherwise specifically called out in the Settlement.

(a) The Parties, by executing this Settlement, assume the risk that they may be mistaken as to relevant facts, and acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true concerning the County Released Claims and other matters contained in or concerning this Settlement. The Parties nevertheless agree and intend this Settlement to be a complete release of the County Released Claims, and to settle all disputes related to the County Released Claims, known or unknown, suspected or unsuspected, that have existed, now exist, or may now

exist between or among the Parties, unless otherwise specifically provided in this Settlement. Unless otherwise specified in this Settlement, the Parties waive any and all rights under California Civil Code Section 1542 and/or any successor section to it with respect to the County Released Claims. The Parties hereby acknowledge and represent that (1) they understand the significance and the consequences of such specific waiver of unknown claims and hereby assume full responsibility for any injuries, damages, lawsuit or liabilities that they may incur, both now and hereafter, from the waiver of said unknown claims, (2) they may discover facts different from, or in addition to, those facts that they now know or believe to be true, and agree that the Settlement and the releases contained herein shall be and remain effective in all respects notwithstanding any subsequent discovery of different or additional facts, (3) they have undertaken their own independent investigation of all the facts relating to the matters being released herein, and in entering into this Settlement and granting the releases contained herein, are not relying on any representation, warranty, or statement of any other Party except as expressly provided herein, and (4) this waiver is an essential and material term of this Settlement.

(2) Petitioners, understanding the above and the provisions of this Settlement, intend by this Settlement, and with and upon the advice of their own independently selected counsel, to release fully, finally and forever all County Released Claims, unless as otherwise specified in this Settlement.

(3) Petitioners will not file, prosecute, bring, or fund any suit, claim or legal action of any kind against County Released Parties based upon any County Released Claims, including Proposed Actions in Section IV and Attachment A. Petitioners covenant against filing any administrative proceedings and to dismiss or cause to be dismissed any administrative proceedings and/or appeals already brought as of the date of this Settlement based upon County Released Claims, including Proposed Actions in Section IV and Attachment A.

(4) Petitioners explicitly retain the right to bring future claims related to projects or actions that may rely upon the ACFP EIR and related General Plan Amendments, Zone Changes and Dairy and Feedlot CAP as adopted by the County Board, including claims related to greenhouse gas emissions.

(5) This Settlement may be pleaded as a defense to and may be used as the basis for an order of specific performance ordering the dismissal by Petitioners of any County Released Claims in any judicial or administrative proceeding against County or a County Released Party.

### **XIII. REPRESENTATIONS AND WARRANTIES**

(1) Each of the Parties represents, warrants, and agrees as follows:

(a) The individuals signing and executing the Settlement on behalf of the Parties have the right, power, legal capacity, and authority to do so, and no further approval or consent of any person, office, board, or other person or entity is necessary.

(b) Each of the Parties has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein and with respect to the advisability of executing this Settlement. Each Party's attorney

has reviewed the Settlement, made any desired changes, and signed the Settlement to indicate that the attorney approved the Settlement as to form. Each of the Parties has been fully advised by its attorneys with respect to its rights and obligations under this Settlement and understands those rights and obligations.

(c) Except for the statements expressly set forth in this Settlement, no Party, or representative or attorney of or for any Party, has made any statement or representation to any other Party regarding a fact relied upon by the other Party in entering into this Settlement, and no Party has relied upon any statement, representation, or promise, written or oral, of any other Party, or of any representative or attorney for any other Party, in executing this Settlement or in making the settlement provided for herein.

(d) Each of the Parties, or a Party representative, has carefully read the Settlement, knows and fully understands the contents thereof, and has made such investigation of the facts pertaining to the settlement and this Settlement and of all matters pertaining hereto as it deems necessary or desirable.

(e) Except as otherwise expressly represented, warranted or provided in this Settlement, each of the Parties expressly assumes the risk that (i) it may hereafter discover facts in addition to or contrary to those it believed to exist or relied upon in entering into this Settlement, including, without limitation, unknown or unanticipated claims which, if known by any Party on the date of execution, may have materially affected the Party's decision to execute this Settlement, (ii) it may have misunderstood matters relevant to negotiating and entering into this Settlement, and (iii) another Party may have negligently misrepresented or negligently failed to disclose facts pertinent to the Settlement. The Parties agree that, should unknown or unanticipated claims, misunderstandings, mistakes, unintentional misrepresentations, or nondisclosures exist, then the Parties nevertheless intend that this Settlement shall thereafter continue in full force and effect and shall not be subject to rescission or rejection for any reason, except as specifically provided in this Settlement.

(f) This Settlement is contractual, the result of negotiations between the Parties, and intended to be final and binding as between the Parties, and is further intended to be effective as full and final accord and satisfaction between the Parties. Each of the Parties hereto relies on the finality of this Settlement as a material factor inducing that Party's execution of this Settlement.

(g) The Parties shall, together and/or individually, execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Settlement.

(h) Each of the Parties to this Settlement agrees that such Party will not take any action that would interfere with the performance of this Settlement by any of the Parties, or that would adversely affect the rights, or interfere with the obligations, provided for herein.

#### **XIV. GENERAL PROVISIONS**

(1) **No Admission.** The Parties explicitly acknowledge and covenant that this Settlement represents a settlement of disputed rights and claims and that, by entering into this Settlement, no Party hereto admits or acknowledges the existence of any liability or wrongdoing, all such liability being expressly denied. Neither this Settlement, nor any provision contained herein, nor any provision of any related document, shall be construed as any admission or concession of liability, of any wrongdoing, or of any preexisting liability.

(2) **Governing Law.** This Settlement shall be governed by and interpreted and construed in accordance with the laws of the State of California.

(3) **Construction.** This Settlement shall be construed according to the fair and plain meaning of its terms. Nothing in this Settlement shall be construed to limit or restrict County's constitutional police power or land use authority in any way with respect to future legislative, administrative, or other actions by County or County Board.

(4) **Integration.** This Settlement constitutes a single integrated written contract, and represents and expresses the entire agreement and understanding of the Parties with respect to the subject matter contained herein. All prior and contemporaneous discussions and negotiations, oral or written, between the Parties are merged and integrated into, and are superseded by, this Settlement. No covenants, agreements, representations, or warranties of any kind whatsoever, whether express or implied in law or fact, have been made by any Party hereto, except as specifically set forth in this Settlement or in any amendment, contemporaneous or subsequent written agreement between the Parties.

(5) **Severability.** Should any provision of this Settlement be held or found void, voidable, unlawful or, for any reason, unenforceable by a court of competent jurisdiction, then the Parties shall work together to determine whether any other provisions remain binding and enforceable. If the Parties cannot agree on which provisions remain binding and enforceable, then any Party may request mediation to resolve the dispute or institute a legal action to reform the Settlement. Such a remedy may not provide additional opportunities to reopen the Litigation unless voluntarily agreed to by the County.

(6) **No Waiver.** The failure of any Party hereto to enforce the rights conferred or reserved to it in this Settlement, or insist on performance of any of the terms and conditions of this Settlement shall not void any of the rights, terms or conditions, constitute a waiver or modification of any rights, terms or conditions, nor be construed as a waiver or relinquishment by any Party of the performance of any such rights, terms or conditions. No custom or practice which exists or arises between or among the Parties in the course of administration of this Settlement will be construed to waive or modify any Party's rights to (1) insist upon the performance by any other Party of any covenant and/or promise in this Settlement, or (2) exercise any rights given to it on account of any breach of such covenant and/or promise.

(7) **Amendment.** This Settlement may be modified or amended only by written amendment executed by all of the Parties. The Parties acknowledge that, due to the nature of the actions and obligations provided in this Settlement, it may be necessary for the Parties, from time

to time, to execute additional or supplemental documentation to clarify and implement the provisions of this Settlement. The Parties agree to cooperate in good faith, and to negotiate and enter into such additional or supplemental documentation, as may be determined to be reasonably necessary and/or appropriate by the Parties. Modifications to the terms of this Settlement are permissible, so long as such actions are agreed to by all of the Parties. Any amendment, modification, additional or supplemental documentation to the Settlement must be in writing and executed by the Parties, or individuals with authority to execute such documentation on behalf of the Parties. Any amendment, modification, additional or supplemental documentation deemed necessary by the Parties shall be executed in either an original document with all signatures, or by counterparts, in the manner proscribed in Subsection (9), below.

(8) **Computation of Time.** The time in which any act is to be done under this Settlement is computed by excluding the first day, and including the last day, unless the last day is a holiday or a Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code.

(9) **Counterparts.** This Settlement may be executed in counterparts and by facsimile or electronic signatures, which, when joined together, shall constitute a full Settlement and shall be binding on the Parties, even though all signatures may not be on one original document or the same counterpart.

(10) **Successors and Assigns.** This Settlement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties, including, but not limited to, their respective heirs, administrators, agents, employees, officers, and boards. This Settlement does not, expressly or impliedly confer upon any person other than the Parties, their successors or assigns, any rights or benefits under or by reason of this Settlement.

(11) **Third Party Beneficiary.** This Settlement shall not create any right of action in any third party.

(12) **Headings.** The descriptive headings used in this Settlement are for convenience only. They are not part of the Settlement, and should not be construed to affect the meaning of any provision of this Settlement.

(13) **Good Faith Clause.** The Parties agree to cooperate fully, reasonably, and in good faith in the implementation of this Settlement. The Parties also agree to execute any and all supplemental documents, and to take all additional lawful and reasonable actions, which may be necessary or appropriate to give full force and effect to the basic terms and to fully implement the goals and intent of this Settlement.

(14) **Term of Settlement.** This Settlement shall be operative from the Date of Execution through December 31, 2025 or for a lesser period of time should Federal, State or regional law or regulations make such County obligations invalid, illegal, preempted, unnecessary or otherwise redundant.

(15) **The Parties.** Having read and considered the above provisions indicate their Settlement by their authorized signatures below.

(16) **Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by overnight delivery or first-class mail, postage prepaid and addressed as set forth below. Notice sent by electronic mail shall not serve as adequate notice pursuant to this section.

(a) Notice personally delivered or sent by overnight mail is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Any Party may change the above address by giving written notice pursuant to this paragraph.

**COUNTY:**

County Administrative Officer  
2800 W. Burrel Ave.  
Visalia, CA 93291  
Phone: (559) 636-5005  
Fax: (559) 733-6318

**SIERRA CLUB:**

Sierra Club  
Kern-Kaweah Chapter  
P.O. Box 3357  
Bakersfield, CA 93385  
Attn: Vice-Chair Gordon Nipp  
[gnipp@bak.rr.com](mailto:gnipp@bak.rr.com)

**with a copy to:**

County Counsel  
2900 W. Burrel Ave.  
Visalia, CA 93291  
Phone: (559) 636-4950  
Fax: (559) 737-4319

**with a copy to:**

Babak Naficy  
Law Offices of Babak Naficy  
1504 Marsh Street  
San Luis Obispo, CA 93407  
[babaknaficy@sbcglobal.net](mailto:babaknaficy@sbcglobal.net)  
Phone: (805) 593-0926  
Fax: (805) 593-0946

**ASSOCIATION OF IRRITATED  
RESIDENTS:**

Association of Irritated Residents  
29389 Fresno Ave  
Shafter, CA. 93263  
Attn: Tom Frantz, President  
tom.frantz49@gmail.com

**CENTER FOR BIOLOGICAL  
DIVERSITY:**

Jonathan Evans  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612  
jevans@biologicaldiversity.org  
Phone: (510) 844-7118

**with a copy to:**

Babak Naficy  
Law Offices of Babak Naficy  
1504 Marsh Street  
San Luis Obispo, CA 93407  
Phone: (805) 593-0926  
Fax: (805) 593-0946

**THE PARTIES**, having read and considered the above provisions, indicate their Settlement by their authorized signatures below.

**COUNTY OF TULARE**

Date: Aug. 2, 2019

By:

Tyler Cochran  
Chairman, Board of Supervisors

“County”

ATTEST: Jason T. Britt,  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By: Alany Romello

Deputy Clerk



**SIERRA CLUB**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSOCIATION OF IRRITATED  
RESIDENTS**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**THE PARTIES**, having read and considered the above provisions, indicate their Settlement by their authorized signatures below.

**COUNTY OF TULARE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman, Board of Supervisors

“County”

ATTEST: Jason T. Britt,  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

{Reserved for County Seal}

By: \_\_\_\_\_  
Deputy Clerk

**SIERRA CLUB**

Date: 7/30/2019

By: Dorothy L. Nipp  
Title: Vice-Chair, Kern-Kaweah Chapter

**ASSOCIATION OF IRRITATED  
RESIDENTS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE PARTIES**, having read and considered the above provisions, indicate their Settlement by their authorized signatures below.

**COUNTY OF TULARE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman, Board of Supervisors

“County”

ATTEST: Jason T. Britt,  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

{Reserved for County Seal}

By: \_\_\_\_\_  
Deputy Clerk

**SIERRA CLUB**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSOCIATION OF IRRITATED  
RESIDENTS**

Date: 07.30.19

By: Afenty  
Title: President

CENTER FOR BIOLOGICAL  
DIVERSITY

Date: 7/30/19

By: \_\_\_\_\_

Title: Director, Environmental Health Program  
Lori Ann Burd



Approved as to Form  
**County Counsel**

By: \_\_\_\_\_  
Chief Deputy

Approved as to Form  
**Counsel for Sierra Club**

By: \_\_\_\_\_  
Babak Naficy

Approved as to Form  
**Counsel for Association of Irritated Residents**

By: \_\_\_\_\_  
Babak Naficy

Approved as to Form  
**Counsel for Center for Biological Diversity**

By: Jonathan Evans  
Jonathan Evans

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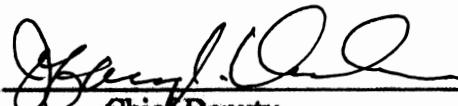
**CENTER FOR BIOLOGICAL  
DIVERSITY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Director, Environmental Health Program  
Lori Ann Burd

**Approved as to Form  
County Counsel**

By:   
Chief Deputy  
Matter # 2018275

**Approved as to Form  
Counsel for Sierra Club**

By:   
Babak Naficy

**Approved as to Form  
Counsel for Association of Irritated Residents**

By:   
Babak Naficy

**Approved as to Form  
Counsel for Center for Biological Diversity**

By:   
Jonathan Evans

**ATTACHMENT A**

**Attachment A – Part I**

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

**IN THE MATTER OF** General Plan )  
Amendment (GPA) No. 2019-00#, Amending ) **Resolution No.** \_\_\_\_\_  
the 2017 Tulare County Animal Confinement )  
Facilities Plan set out in Chapter 12 of the )  
Tulare County 2030 General Plan Update, )  
and An Action Amending the 2017 Dairy and )  
Feedlot Climate Action Plan )

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
\_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

Resolution of the Board of Supervisors of the County of Tulare (“Board”) accepting the Tulare County Planning Commission (“Planning Commission”) recommendations and adopting General Plan Amendment No. 2019-00# for the proposed first Amendment (“2019 ACFP Amendment”) to the 2017 Animal Confinement Facilities Plan (“2017 ACFP”) set out in Chapter 12 of the Tulare County General Plan 2030 Update, and approving an amendment (“2019 Dairy CAP Amendment”) to the 2017 Dairy and Feedlot Climate Action Plan (“2017 Dairy CAP”).

WHEREAS, on December 12, 2017, after notice and hearing, this Board adopted the 2017 ACFP as the updated Chapter 12 of the Tulare County 2030 General Plan Update, approved and adopted the 2017 Dairy CAP, and approved and certified a Final Environmental Impact Report ("2017 FEIR") pursuant to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the Sierra Club, Association of Irritated Residents and the Center for Biological Diversity ("Petitioners") challenged the adoption proceeding in Court; and

WHEREAS, after mediation and considered negotiations, the County of Tulare (the "County") and Petitioners determined that it was in the best interest of the parties and the people of Tulare County to resolve this litigation through a stipulated settlement agreement ("Settlement Agreement") without further court proceedings; and

WHEREAS, the parties to the Settlement Agreement agreed that the County should consider an amendment to the 2017 ACFP to allow any dairy to use the 2017 ACFP "streamlining" provisions for expansions (Policy 2.5-3 of the 2017 ACFP) no more than once every five years; and

WHEREAS, parties to the Settlement Agreement agreed that the County consider amendments to the 2017 ACFP and 2017 Dairy CAP to reduce the 2017 ACFP "streamlining" screening level for dairy expansions listed in the Conformance Checklist criteria set forth in Appendix A to the 2017 ACFP from 25,000 MT CO2e per year to 15,000 MT CO2e per year; and

WHEREAS, the parties to the Settlement Agreement agreed that the County should consider an amendment to the 2017 Dairy CAP to move certain GHG emission reduction strategies from Category B to Category A as those Categories were established in the 2017 Dairy CAP for environmental review purposes under CEQA; and

WHEREAS, in order to comply with the Settlement Agreement, the Board on [date] initiated an action (General Plan Initiation No. GPI 2019-#) to amend the 2017 ACFP pursuant to Title 7, Chapter 3, Articles 5 and 6, of the California Government Code; and

WHEREAS, the County has given notice of the 2019 ACFP Amendment as provided in Government Code sections 65353, 65355 and 65090, and included the 2019 Dairy CAP Amendment, on [date]; and

WHEREAS, the County has complied with SB 18 (adopted in 2004) by notifying Native American tribes identified by the Native American Heritage Commission of the opportunity to consult on the proposed General Plan amendment by sending consultation notification letters to [number] tribal contacts on record at the time, on [date], for pre-consultation and [say "no" or the number of] requests for consultation were received as a result of these notifications; and

WHEREAS, pursuant to Government Code section 65352, the County referred the proposed 2019 ACFP, and included the 2019 Dairy CAP Amendment, to the required government entities on [date] and provided a forty-five (45) day comment period that expired on [date]; and

WHEREAS, County staff has made such investigation of facts bearing upon the 2019 ACFP Amendment and 2019 Dairy CAP Amendment to assure action consistent with the procedures and purposes set forth in the Government Code and other elements of the Tulare County General Plan; and

WHEREAS, the County staff recommended that, as provided for in the State CEQA Guidelines Sections 15164, an Addendum to the 2017 FEIR regarding the 2017 ACFP and 2017 Dairy CAP ("Addendum to the 2017 FEIR") should be considered for the environmental review of the proposed 2019 ACFP and Dairy CAP Amendments; and

WHEREAS, the County prepared such an Addendum to the 2017 FEIR in compliance with State CEQA Guidelines Section 15164; and

WHEREAS, a Notice of a Public Hearing setting a public hearing on the proposed 2019 ACFP Amendment and 2019 Dairy CAP Amendment, and a proposed Addendum to the 2017 FEIR, before the Planning Commission at its regular meeting on [date] was published in the [name of newspaper] on [date]; and

WHEREAS, the Planning Commission held the noticed public hearing at its regular meeting on [dated] and during that public hearing, which was recorded, County staff presented evidence regarding the proposed 2019 ACFP Amendment, 2019 Dairy CAP Amendment, and the proposed Addendum to the 2017 FEIR to the Planning Commission and answered Planning Commission questions on the matter, and during that public hearing the Planning Commission provided an opportunity for, heard, and considered public testimony and comment on the matter; and

WHEREAS, the Planning Commission reviewed the proposed 2019 ACFP and Dairy CAP Amendments and found them consistent with the Tulare County General Plan 2030 Update; and

WHEREAS, the Planning Commission is an advisory body to the Board with respect to the adoption of the 2019 ACFP and Dairy CAP Amendments, and after its noticed public hearing, by its Resolution No. [#] recommended that (a) the Board approve the proposed Addendum to the 2017 FEIR, (b) adopt the proposed 2019 ACFP Amendment, and (c) adopt the proposed 2019 Dairy CAP Amendment, all as presented; and

WHEREAS, the Board is the decision-making body for the adoption of the 2019 ACFP and Dairy CAP Amendments; and

WHEREAS, a Notice of a Public Hearing setting a public hearing on the proposed 2019 ACFP Amendment and 2019 Dairy CAP Amendment, and a proposed Addendum to the 2017 FEIR, before the Board at its regular meeting on [date] was published in the [name of newspaper] on [date]; and

WHEREAS, this Board held the noticed public hearing on the proposed 2019 ACFP and Dairy CAP Amendments and the proposed Addendum to the 2017 FEIR, at its regular meeting held on [dated] and during that public hearing, which was recorded, County staff presented evidence regarding the proposed 2019 ACFP and Dairy CAP Amendments and the Addendum to the 2017 FEIR and answered Board questions on this matter, and during that public hearing the Board provided an opportunity for, heard, and considered public testimony and comment on the matter; and

WHEREAS, the Board, by separate resolution on this same date, approved the Addendum to the 2017 FEIR, finding that none of the conditions set forth in Public Resources Code Section 21166 and State CEQA Guidelines Section 15162 would require preparation of a Subsequent or Supplemental EIR with respect to the adoption of the proposed 2019 ACFP and Dairy CAP Amendments.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board hereby accepts the Planning Commission recommendations and amends the 2017 ACFP as shown in Attachment 1.
2. The Board hereby accepts the Planning Commission recommendations and amends the 2017 Dairy CAP as shown in Attachment 2.
3. All other terms and provisions of the 2017 ACFP and 2017 Dairy CAP shall remain unchanged and in full force and effect.

Attachment 1  
2019 ACFP Amendment

(A) The first sentence in the last paragraph of Section 1.2 *ACFP Update* of the 2017 ACFP is amended to read:

“This updated ACFP also establishes a Conformance Checklist Review Procedure consistent with the California Environmental Quality Act that will apply to bovine facility expansions no more than once every five years for a given facility.”

(B) The following definition is added to Section 2 of the 2017 ACFP in the definitions under “Introduction” to read:

“Expansion: A dairy expansion is defined as a net increase above the ACFP List permitted herd sizes.”

(C) The first sentence of Policy 2.5-3 in Section 2.5 *Permitting Requirements – Bovine Facilities and Bovine Facility Expansions* of the 2017 ACFP is amended to read:

“Bovine facility expansions may be permitted once every five years through a Conformance Checklist review procedure, in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15168(c)(4).”

(D) The following is added to the end of 2.6.1 Application Contents in Section 2.6 *Applications – New Bovine Facilities and Bovine Facility Expansions* of the 2017 ACFP:

“6. For a bovine facility expansion, whether the bovine facility has previously used the streamlined Conformance Checklist Review Procedure, and if so, dates of previous expansion approval.”

(E) The following sentence in Subsection (a) of Item No. 2 in the Conformance Checklist set out in Appendix A to the 2017 ACFP is amended to read:

“(a) generate less than 15,000 metric tons per year of net Greenhouse Gas (GHG) Emissions, as set forth in the amended Dairy and Feedlot Climate Action Plan (Dairy CAP), and would otherwise comply with the Dairy CAP?” For the purpose of calculating the expected emissions from the proposed expansion, each application for expansion, at a minimum, must account for all emission sources relied upon in the ACFP and Dairy CAP Environmental Impact Report and disclose how many of each of the following categories of animals would

be added to the existing herd: Dairy Cows, Dairy Heifers 0-12 months, Dairy Heifers 12-24 months, Dairy Calves.

Attachment 2  
2019 Dairy CAP Amendment

(A) The following sentence in the introductory section of the second sentence in the second paragraph of Section 5.2.2 Streamlined Analysis Level of the 2017 Dairy CAP is amended to read:

“The 2017 Dairy CAP chose 25,000 MT CO<sub>2</sub>e/yr as a streamlined analysis level because ...”

(B) The following paragraph is added to the end of Section 5.2.2 Streamlined Analysis Level of the 2017 Dairy CAP:

“However, although these considerations still apply, the County has decided as of [date of adoption] to use a streamlined analysis level of 15,000 MT CO<sub>2</sub>e/yr consistent with the [date] settlement of a legal challenge to the 2017 ACFP and Dairy CAP by the Sierra Club, the Associated of Irritated Residents and the Center for Biological Diversity.”

(C) The first paragraph of Section 5.3 Proposed CEQA Checklist of the 2017 Dairy CAP is amended to read:

“Table 5 lists the Category A reduction strategies, which new or expanding dairies or feedlots must (1) incorporate into their facility to the extent applicable based on the project specifics or (2) provide justification as to why the given strategy is impracticable or infeasible for the facility. For strategies D5, D6, D7, D8, E6, E7, E8, E9, and E10, implementation is also contingent upon: 1) adequate state or other government funding, 2) technological and economic feasibility per SB 1383, and 3) feasibility as defined by CEQA.”

(D) Table 5 of Section 5.3 Proposed CEQA Checklist of the 2017 Dairy CAP is amended to read as set out below:

<b>Table 5. Category A Reduction Strategies for Implementation at New or Expanding Facilities Consistent with the Dairy CAP</b>		
<b>Checklist #</b>	<b>Reference # (Appendix C)</b>	<b>Reduction Strategies</b>
<b>Dairy Operations</b>		
D1	C9.1.5	Implement environmentally responsible purchasing of feed

**Table 5. Category A Reduction Strategies for Implementation at New or Expanding Facilities Consistent with the Dairy CAP**

<b>Checklist #</b>	<b>Reference # (Appendix C)</b>	<b>Reduction Strategies</b>
		additives (i.e. use locally sourced materials and/or agricultural by-products such as citrus pulp and almond hulls, when available). This measure must be consistent with Total Mixed Ration (TMR) or other efficient feeding strategies, as well as animal health and efficient milk production requirements.
D2	C9.1.5	Use a TMR or other efficient feeding strategy intended to maximize feed-to-milk production efficiency in lactating cows.
D3	C9.1.4	Comply with nutrient management plans to reduce fertilizer requirements (i.e., GHG emissions associated with fertilizer production and transportation)
D4	C9.1.4	Comply with air and water quality plans to achieve GHG benefits (e.g., less water usage)
D5*	S9(3)	<u>Use a digester, designed and operated per applicable standards, and the captured methane for energy use to displace fossil fuel use. Approaches include participation in centralized co-digestion facilities for processing dairy manure and landfill waste or in a digester project utilizing biomethane as a transportation fuel or for injection into natural gas pipelines or for electrical energy use on-site or off-site.</u>
D6*	O(1)	<u>Use scrape systems to divert manure from lagoon to another part of the storage system, including composting for on-site or off-site use.</u>
D7*	O(2)	<u>Increase solids separation to reduce loading.</u>
D8*	11	<u>Use pasture-based management practices. May be feasible for individual dairies or feedlots, but not as a Countywide approach.</u>
<b>Energy</b>		
E1	C2.1.1	The farm must meet or exceed Title 24 standards in climate-controlled buildings (e.g., not barns)
E2	C2.1.3	Provide verification of energy savings (e.g., electric bills or third-party verification)
E3	C2.1.5	Install energy efficient boilers

**Table 5. Category A Reduction Strategies for Implementation at New or Expanding Facilities Consistent with the Dairy CAP**

<b>Checklist #</b>	<b>Reference # (Appendix C)</b>	<b>Reduction Strategies</b>
E4	C2.1.4	Install energy efficient appliances (e.g., for milk cooling)
E5	C2.2.1	Install energy efficient area lighting
<u>E6*</u>	<u>C2.3.1</u>	<u>Establish onsite renewable or carbon-neutral energy systems – generic</u>
<u>E7*</u>	<u>C2.3.2</u>	<u>Establish onsite renewable energy systems – solar power</u>
<u>E8*</u>	<u>C2.3.3</u>	<u>Establish onsite renewable energy systems – wind power</u>
<u>E9*</u>	<u>C2.3.4</u>	<u>Utilize a combined heat and power system</u>
<u>E10*</u>	<u>C2.3.6</u>	<u>Establish methane recovery on digester</u>
<b>Transportation [20 or more new employees]</b>		
T1	C3.2.6	Provide bike parking if requested by employees
T2	C3.4.5	Provide end of trip facilities if requested by employees (e.g., shower for people biking)
<b>Water, Solid Waste, and Recycling (if available and not prohibited by USDA, CDFA, or other government agencies)</b>		
R1	C4.2.2	Adopt a water conservation strategy
R2	C4.2.3	Design water-efficient landscapes (decorative landscaping only)
R3	C4.2.4	Use water-efficient landscape irrigation systems (decorative landscaping only)
R4	C4.2.5	Reduce turf in landscapes and lawns (decorative landscaping only)
R5	C4.2.6	Plant native or drought-resistant trees and vegetation (decorative landscaping only)

\*For measures D5, D6, D7, D8 ,E6, E7, E8, E9, and E10, implementation is also contingent upon: 1) adequate state or other government funding, 2) technological and economic feasibility per SB 1383, and 3) feasibility as defined by CEQA.

(E) Table 6 of Section 5.3 Proposed CEQA Checklist of the 2017 Dairy CAP is amended to read as set out below:

<b>Table 6. Category B Reduction Strategies for Consideration at New or Expanding Facilities (may be used as substitutes for Category A Strategies)</b>		
<b>Checklist #</b>	<b>Reference # (Appendix C)</b>	<b>Measure</b>
<b>Dairy Operations</b>		
D5	S9(3)	Use a digester, designed and operated per applicable standards, and the captured methane for energy use to displace fossil fuel use. Approaches include participation in centralized co-digestion facilities for processing dairy manure and landfill waste or in a digester project utilizing biomethane as a transportation fuel or for injection into natural gas pipelines or for electrical energy use on-site or off-site.
D6	θ(1)	Use scrape systems to divert manure from lagoon to another part of the storage system, including composting for on-site or off-site use.
D7	θ(2)	Increase solids separation to reduce loading.
D8	††	Use pasture-based management practices. May be feasible for individual dairies or feedlots, but not as a Countywide approach.
<b>Energy</b>		
E6	€2.3.1	Establish onsite renewable or carbon neutral energy systems—generic
E7	€2.3.2	Establish onsite renewable energy systems—solar power
E8	€2.3.3	Establish onsite renewable energy systems—wind power
E9	€2.3.4	Utilize a combined heat and power system
E10	€2.3.6	Establish methane recovery on digester
<b>Transportation</b>		
T3	C3.4.11	Provide employer-sponsored vanpool/shuttle
T4	C3.1.5	Increase transit accessibility if adjacent to public transportation
T5	C3.4.12	Implement intra-farm bike-sharing

**Table 6. Category B Reduction Strategies for Consideration at New or Expanding Facilities (may be used as substitutes for Category A Strategies)**

Checklist #	Reference # (Appendix C)	Measure
T6	C3.7.2	Utilize alternative fueled vehicles on-site
T7	C3.7.3	Utilize electric or hybrid vehicles on-site

**Water, Solid Waste, and Recycling**

R6	C6.1.1	Institute or extend recycling and composting services
R7	C4.1.3	Use locally sourced water supply
R8	C4.2.1	Install low-flow water fixtures (decorative landscaping only)
R9	C6.1.2	Recycle demolished construction material

**Miscellaneous**

M1	C7.1.1	Plant trees
M2	C8.1.1	Use alternative fuels for construction equipment (construction only)
M3	C8.1.2	Use electric and hybrid construction equipment (construction only)
M4	C8.1.3	Limit construction equipment idling beyond regulation requirements (construction only) or limit idling by delivery and other operational vehicles
M5	C8.1.4	Institute a heavy-duty off-Road vehicle plan (construction only)
M6	C8.1.5	Implement a construction vehicle inventory tracking system (construction only)
M7	C9.1.3	Use local and sustainable building materials (construction only)
M8	C9.1.4	Additional BMPs in agriculture and animal operations
M9	C9.1.5	Environmentally responsible purchasing
M10	C9.1.6	Implement an innovative strategy for GHG reductions
M11	C9.1.7	Implement within the existing portion of a facility a Category A strategy or a Category B strategy to the same or

**Table 6. Category B Reduction Strategies for Consideration at New or Expanding Facilities (may be used as substitutes for Category A Strategies)**

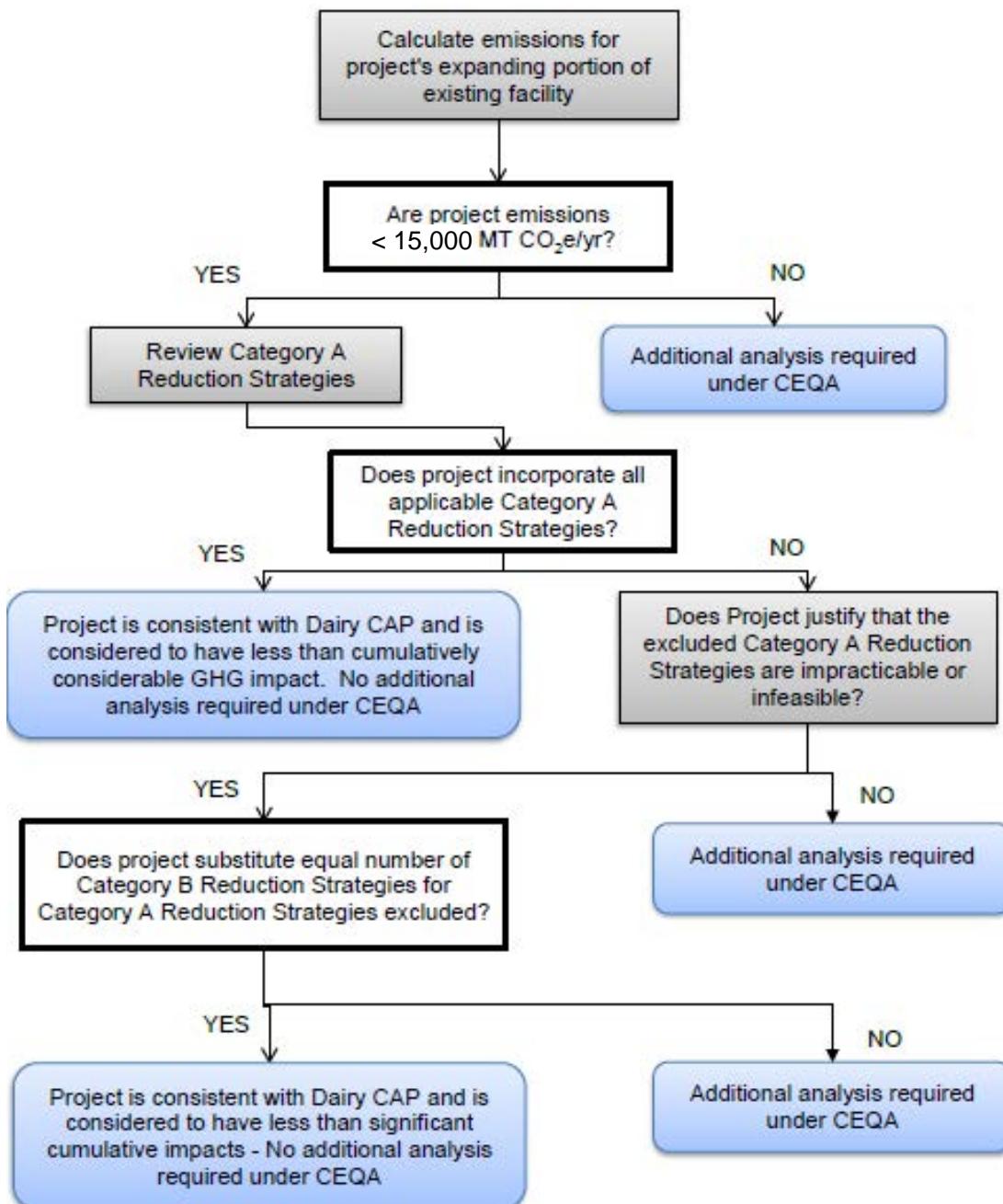
Checklist #	Reference # (Appendix C)	Measure
		greater extent as would have been done for the expanded portion

(F) The second bullet point in second paragraph of Section 7 Future Project GHG and Climate Change Evaluations of the 2017 Dairy CAP is amended to read:

- “The facility expansion has emissions above the streamlining analysis level of 15,000 MTCO<sub>2</sub>e, OR”

(G) Figure 1 of Section 7 Future Project GHG and Climate Change Evaluations of the 2017 Dairy CAP is amended to read as set out below:

**Figure 1. Flow Chart Illustrating Method of Determining Required Level of Analysis for CEQA for Facility Expansions.**



(H) The following sentence is added to the top of each page of Appendix C Summary of Potential Emissions Reduction Strategies to the 2017 Dairy CAP:

“Pursuant to Board of Supervisors Resolution [XXX], Strategies D5, D6, D7, D8, E6, E7, E8, E9, and E10 are Category A, rather than Category B in the “Category” column of this table. Implementation of these strategies is also contingent upon: 1) adequate state or other government funding, 2) technological and economic feasibility per SB 1383, and 3) feasibility as defined by CEQA.”

**Attachment A – Part II**

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF THE APPROVAL AND )  
ADOPTION OF AN ADDENDUM TO THE ) Resolution No. \_\_\_\_\_  
FINAL ENVIRONMENTAL IMPACT )  
REPORT CERTIFIED ON DECEMBER 12, )  
2017, FOR THE 2017 ANIMAL )  
CONFINEMENT FACILITIES PLAN AND )  
DAIRY AND FEEDLOT CLIMATE ACTION )  
PLAN FOR THE PURPOSE OF )  
CONSIDERING THE 2019 AMENDMENTS )  
TO THE 2017 ANIMAL CONFINEMENT )  
FACILITIES PLAN AND DAIRY AND )  
FEEDLOT CLIMATE ACTION PLAN )

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
\_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

Resolution of the Board of Supervisors (“Board”) of the County of Tulare accepting the recommendations of the Tulare County Planning Commission (Planning Commission) and approving an the Addendum to the 2017 Final Environmental Impact Report (“2017 FEIR”) for the 2017 Animal Confinement Facilities Plan (“2017

ACFP") and the 2017 Dairy and Feedlot Climate Action Plan ("2017 Dairy CAP") for the purpose of the considering the proposed 2019 Amendments to the 2017 ACFP and 2017 Dairy CAP.

WHEREAS, the Tulare County Planning Commission recommends by its Resolution No. [insert] that the Board consider and approve an Addendum ("2019 Addendum") (Attachment 1) to the 2017 FEIR in compliance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines for the purposes of review of the proposed 2019 Amendments to the 2017 ACFP and 2017 Dairy CAP ("2019 Amendments"); and

WHEREAS, the County completed an initial CEQA Checklist as part of the preparation of the proposed 2019 Addendum to the 2017 FEIR and determined that none of the conditions set forth in Public Resources Code Section 21166 and CEQA Guideline Section 15162 would require the preparation of a Subsequent or Supplemental Environmental Impact Report with respect to the adoption of the proposed 2019 Amendments; and

WHEREAS, at a duly noticed Planning Commission hearing on [date], which hearing was recorded, County staff presented evidence regarding the 2019 Addendum and proposed 2019 Amendments to the Planning Commission and answered Planning Commission questions on the matter;

WHEREAS, at said Planning Commission hearing, public testimony was received and considered regarding the 2019 Addendum and proposed 2019 Amendments; and

WHEREAS, the Planning Commission is the advisory body to the Board with respect to the 2019 Addendum and proposed 2019 Amendments, and adopted its Resolution No. [insert] recommending approval and adoption of said Addendum and proposed Amendments; and

WHEREAS, the Board is the decision-making body for the 2019 Addendum and proposed 2019 Amendments; and

WHEREAS, the Board held a duly noticed public hearing on [date] to consider the proposed 2019 Addendum and proposed 2019 Amendments, which public hearing was recorded; and

WHEREAS, County staff presented evidence at the public hearing, which was recorded, and during that public hearing the Board provided an opportunity for, received, and considered public testimony on the matter at such hearing.

NOW, THEREFORE, BE IT RESOLVED that the Board, pursuant to the above findings and based on a thorough review of the proposed 2019 Addendum, the 2017 Final EIR, and evidence received to date, finds and determines as follows:

1. That the 2019 Addendum to the 2017 EIR was prepared in compliance with CEQA, the CEQA Guidelines, and Tulare County local CEQA procedures.
2. That based on substantial evidence in light of the whole record, none of the conditions set forth in Public Resources Code Section 21166 and CEQA Guidelines Section 15162, including adoption of the proposed 2019 Amendments, have occurred that would require preparation of a Subsequent or Supplemental EIR, in that
  - (a) no substantial changes are proposed in the Project described in the 2017 Final EIR that will require major revisions of the 2017 FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
  - (b) no substantial changes have occurred with respect to the circumstances under which the Project described in the 2017 Final EIR is being undertaken which will require major revisions in the 2017 FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
  - (c) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2017 FEIR was certified as complete, has become available or shows; any of the following:
    - i. the Project described in the 2017 Final EIR will have one or more significant effects not discussed in the 2017 FEIR;
    - ii. significant effects previously examined will be substantially more severe than shown in the 2017 FEIR;
    - iii. mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the Project proponents decline to adopt the mitigation measure or alternative; or
    - iv. mitigation measures or alternatives which are considerably different from those analyzed in the 2017 FEIR would substantially reduce one or more significant effects on the environment, but the Project proponents decline to adopt the mitigation measure or alternative.
3. In connection with the Board's review of the 2019 Amendments and the 2019 Addendum, the Board has considered the 2017 FEIR, has independently

reviewed the 2019 Addendum, and has exercised its independent judgment in making the findings in this Resolution.

4. The Board approves and adopts the 2019 Addendum to the 2017 FEIR.

Attachment 1

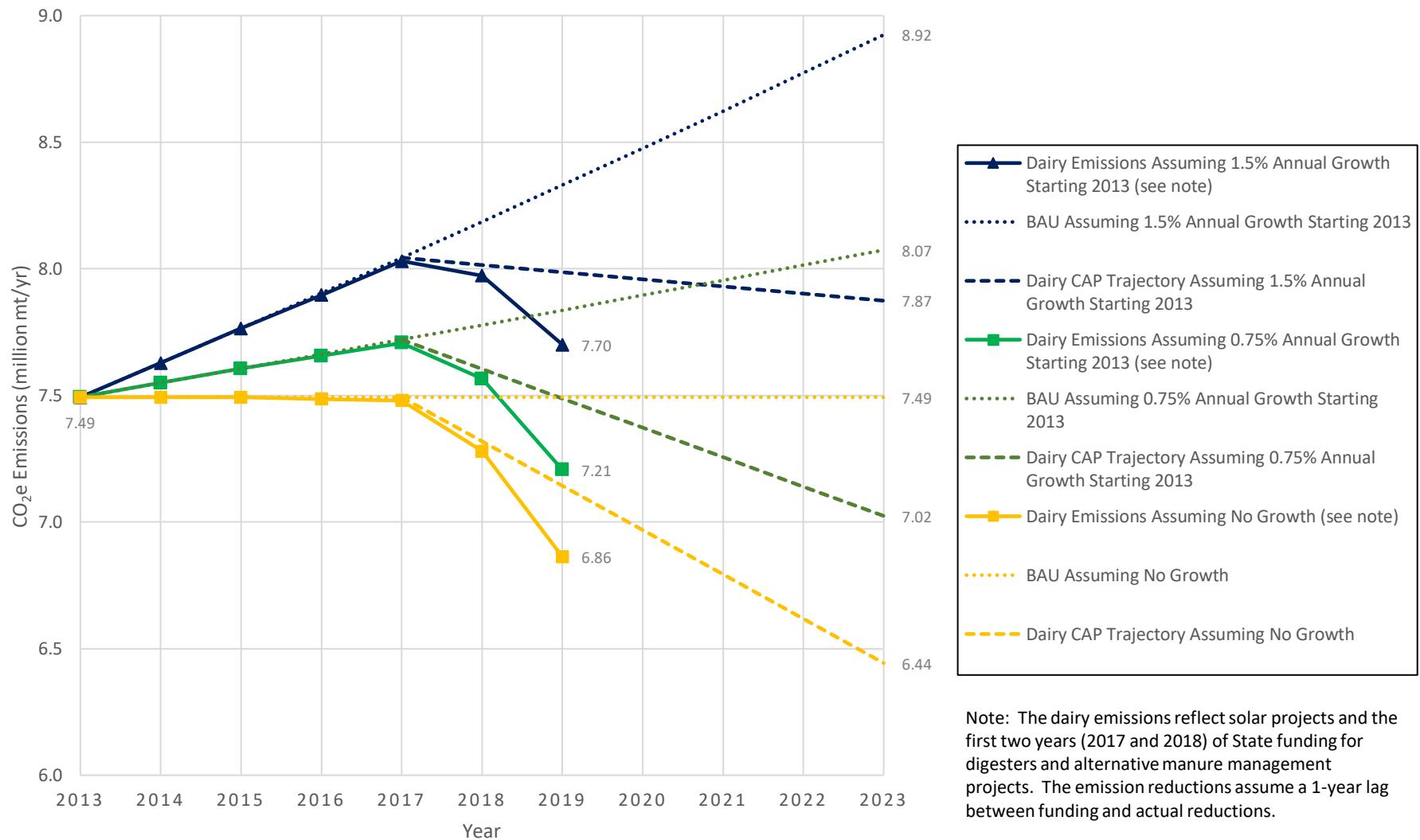
2019 Addendum to 2017 FEIR

(To be inserted before hearing)

## **ATTACHMENT B**

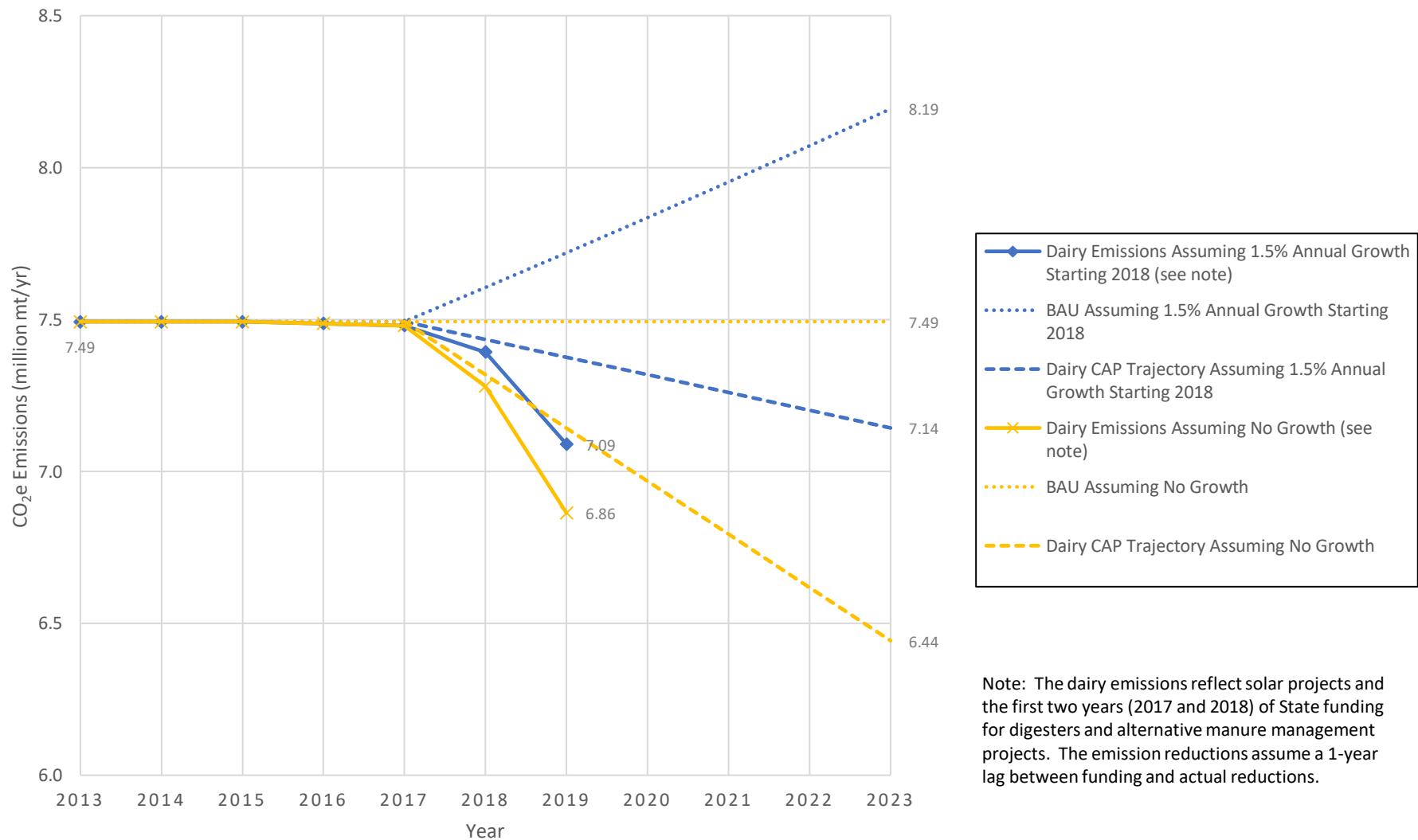
## Attachment B

**Figure 1. Estimated Dairy GHG Emissions  
in Relation to the Dairy CAP 1.05 MT Benchmark;  
for Assumed Growth Starting in 2013**



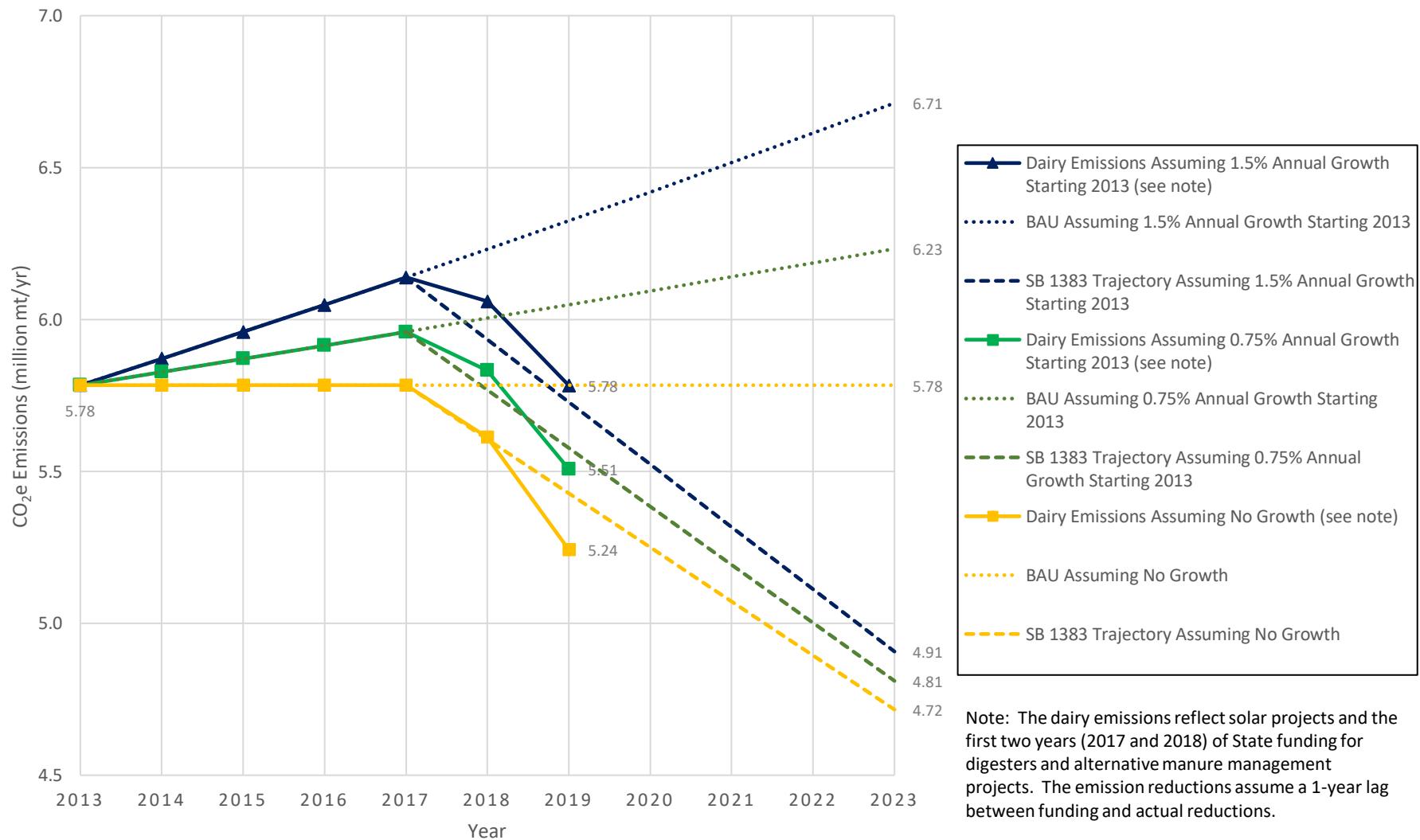
## Attachment B

**Figure 2. Estimated Dairy GHG Emissions  
in Relation to the Dairy CAP 1.05 MT Benchmark;  
for Assumed Growth Starting in 2018**



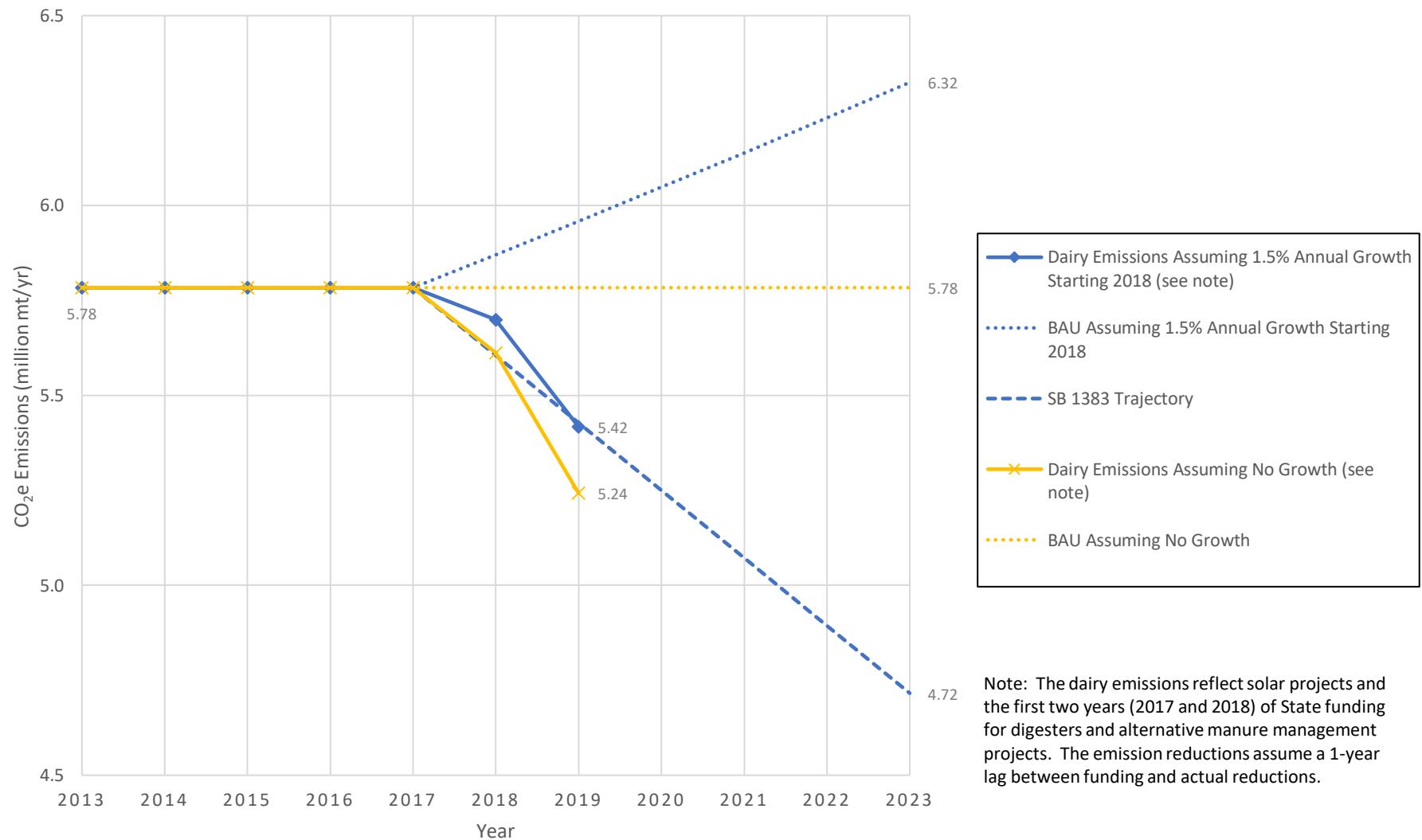
## Attachment B

**Figure 3. Estimated Dairy Methane Emissions  
in Relation to the Maximum Projected SB 1383 Potential Trajectory;  
for Assumed Growth Starting in 2013**



## Attachment B

**Figure 4. Estimated Dairy Methane Emissions  
in Relation to the Maximum Projected SB 1383 Potential Trajectory;  
for Assumed Growth Starting in 2018**



**Table 1****Progress of GHG Emission Reductions in Relation to the Dairy CAP 1.05 Benchmark (million mtCO2e/yr)**

Year	Emission Reductions Needed Relative to BAU <sup>1</sup>	Emission Reductions Achieved Relative to BAU <sup>2</sup>
2017	0.00	-0.01
2018	-0.18	-0.21
2019	-0.35	-0.63
2020	-0.52	
2021	-0.70	
2022	-0.88	
2023	-1.05	

Notes:

1. The emission reductions needed relative to BAU assume a linear path from 2017 to 2023.
2. The emission reductions achieved relative to BAU reflect solar projects and the first two years (2017 and 2018) of State funding for digesters and alternative manure management projects.

The emission reductions assume a 1-year lag between funding and actual reductions.

**Table 2****Progress of Methane Emissions in Relation to the Maximum Projected SB 1383 Potential Trajectory (million mtCO2e/yr)**

Year	SB 1383 Trajectory <sup>1</sup>	Dairy Emissions Assuming 1.5% Annual Growth <sup>2,3</sup>	Dairy Emissions Assuming 0.75% Annual Growth <sup>2,3</sup>	Dairy Emissions Assuming No Growth <sup>3</sup>
2017	5.78	5.78	5.78	5.78
2018	5.61	5.70	5.66	5.61
2019	5.43	5.42	5.33	5.24
2020	5.25			
2021	5.07			
2022	4.89			
2023	4.72			

Notes:

1. The SB 1383 trajectory assumes a linear path from 2017 to 2030 (the trajectory is shown up to 2023).
2. The annual growth rate is applied starting in 2018. No growth is assumed prior to 2018.
3. The dairy emissions reflect solar projects and the first two years (2017 and 2018) of State funding for digesters and alternative manure management projects. The emission reductions assume a 1-year lag between funding and actual reductions.

## **ATTACHMENT C**

# Attachment C

CIV-110

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY:</b> NAME: FIRM NAME: STREET ADDRESS: CITY: <span style="float: right;">STATE: ZIP CODE:</span> TELEPHONE NO.: <span style="float: right;">FAX NO.:</span> E-MAIL ADDRESS: <b>ATTORNEY FOR (Name):</b> <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> Tulare STREET ADDRESS: 221 S Mooney Blvd MAILING ADDRESS: CITY AND ZIP CODE: Visalia, 93291 BRANCH NAME: Central District	<b>FOR COURT USE ONLY</b>
Plaintiff/Petitioner: Sierra Club, Center for Biological Diversity, Association of Irrigate Defendant/Respondent: County of Tulare, Tulare County Board of Supervisors	
<b>REQUEST FOR DISMISSAL</b>	<b>CASE NUMBER:</b> 272380
<b>A conformed copy will not be returned by the clerk unless a method of return is provided with the document.</b>	
<b>This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)</b>	

**1. TO THE CLERK: Please dismiss this action as follows:**

- a. (1)  With prejudice (2)  Without prejudice
- b. (1)  Complaint (2)  Petition
- (3)  Cross-complaint filed by (name):
- (4)  Cross-complaint filed by (name):
- (5)  Entire action of all parties and all causes of action
- (6)  Other (specify):\*

on (date):

on (date):

**2. (Complete in all cases except family law cases.)**

The court  did  did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date:



(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

(SIGNATURE)

\*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross Complainant

**3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\***

Date:



(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

(SIGNATURE)

\*\* If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross Complainant

*(To be completed by clerk)*

- 4.  Dismissal entered as requested on (date):
- 5.  Dismissal entered on (date): as to only (name):
- 6.  Dismissal not entered as requested for the following reasons (specify):

- 7. a.  Attorney or party without attorney notified on (date):
- b.  Attorney or party without attorney not notified. Filing party failed to provide  a copy to be conformed  means to return conformed copy

Date: Clerk, by \_\_\_\_\_, Deputy

Page 1 of 2

Plaintiff/Petitioner: Sierra Club, Center for Biological Diversity, Association of Irrigate  
Defendant/Respondent: County of Tulare, Tulare County Board of Supervisors

CASE NUMBER:  
272380

**COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS**

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

**Declaration Concerning Waived Court Fees**

1. The court waived court fees and costs in this action for (name): \_\_\_\_\_
2. The person named in item 1 is (check one below):
  - a.  not recovering anything of value by this action.
  - b.  recovering less than \$10,000 in value by this action.
  - c.  recovering \$10,000 or more in value by this action. (If item 2c is checked, item 3 must be completed.)
3.  All court fees and court costs that were waived in this action have been paid to the court (check one): Yes  No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: \_\_\_\_\_

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY MAKING DECLARATION)

(SIGNATURE) 