

Western United Dairymen

Comments on the Revised Draft Dairy Element of the Kings County General Plan September 10, 2001

Page DE-14 Policies DE 1.2a and 1.2b:

The language could be somewhat more specific to state that *only the new portion* of an existing facility is subject to site plan review.

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Page DE-14 Policy DE 1.2c:

Consider that with proper grading or floodwater exclusion structures, it would be possible to construct a facility in the 100-year flood zone.

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Page DE-15 Policy DE 1.2f:

Restriction on slopes over 5% is too severe. Proper grading design will allow drainage systems to effectively contain runoff. We suggest no restriction on slope is necessary, so long as the facility is able to comply with the requirements of the Regional Board.

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Page DE-15 Policy DE 1.2g:

As written, an existing dairy with no option for expansion other than toward a school is effectively prohibited from growth, even if it pre-existed the school. We suggest that further encroachment could be allowed through the conditional use permit process. For instance, expansion of the milking barn itself, or conversion of an open lot to a freestall system may well enhance the dairy as a neighbor to a school, even if it were located somewhat closer. This policy should allow more flexibility, and should recognize the dairy may have been in place before the school existed. We suggest adding *if such expansion does not further encroach on the school site* to the end of the first sentence of the second paragraph, relating to existing dairies. We also suggest dropping the prohibition of the final sentence beginning with *However, under no circumstances...* and replacing it with a new sentence as follows: *If an existing dairy wishes to expand its facility in a fashion that will further encroach on the non-conforming separation from the school, a conditional use permit will be required.*

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Page DE-16 Policy DE 1.2h:

Similar to the discussion above, this policy is also too restrictive to dairies that may have pre-existed their dairy neighbor. We suggest dropping the sentence starting with *However, under no circumstances...* and replacing it as follows: *The existing separation shall be maintained to the maximum extent feasible.* This will allow planning staff to be flexible, to evaluate each situation on its merits and to accomplish compromise, while retaining the possibility of appeal.

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Page DE-17 Policy DE 1.2i:

We are concerned that existing dairies currently outside the half-mile buffer zone may be precluded from necessary expansion were residential uses to intrude into the buffer zone. Here again we suggest dropping the last sentence, which starts with *However, under no circumstances...* and replacing it with *The existing separation shall be maintained to the maximum extent feasible.*

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Page DE-17 Policy DE 1.2j:

Existing dairies need to be protected from restrictions on their ability to grow should a "compatibility zone" boundary be extended into conflict with them.

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Page DE-18 Objective DE 2.1:

Additional clarity that the Site Plan Review (SPR) applies only to the new portion of an existing facility is needed. We suggest a new sentence as follows: *All new dairies and any new expansion of existing dairies with previously issued zoning permits shall be required to obtain a site plan review (SPR) of the new portion of the facility before construction or operation begins.*

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Page DE-18 Policy DE 2.1b:

We suggest substituting *up to* for *below* in the first sentence.

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Page DE-19 Policies DE 2.1c and 2.1d:

For additional clarity, both of these policies need to add the words *on the new portion of the facility*, to the end of the first sentence, after *(SPR)* and *SPR* consecutively.

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Page DE-19 Objective DE 2.2:

Again, for clarity we suggest substituting the following sentence: *Any new expansion of dairies which were in existence prior to 1979 will require a site plan review (SPR) on the new portion of the facility, except for dairies in the AL-10 zone district, which will require a conditional use permit on the new portion of the facility.*

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Page DE-19 Policy DE 2.2a:

Recommend changing *July 1, 1998*, to the date of adoption of this amendment to the Kings County General Plan.

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Page DE-21 Policy DE 3.1b:

The terminology *as far as possible* is too severe. Consider using *as far as feasible* as a substitute.

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Page DE-22 Policy DE 3.1c:

Here also we are concerned that existing dairies be allowed to expand as needed to remain competitive within the industry and to provide the opportunity for younger generations to become involved in the business. It appears that the current wording of this policy could allow a newly extant rural residential use to preclude a pre-existing dairy from expanding in certain situations and directions. If your sentence could replace the

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words *not be reduced*, with *shall be maintained in so far as feasible*, we would be more comfortable with this policy.

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Cont.

Page DE-22 Policy DE 3.1e:

Consultation with local Native American groups should only be required in the event of discovery of Native American cultural artifacts, not for paleontological or other artifacts of antiquity. Consider adding *affecting Native American cultural resources* at the end of the final sentence of this policy.

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Page DE-23 Policy DE 3.2c:

We recommend the minimum setback from *domestic* water wells be 100 feet. There should be *no requirement* for setback from irrigation wells, so long as the wells are properly constructed and protected from surface runoff. If other waterways and waters are adequately protected from contaminated runoff, there will be no need for setbacks in these cases either. Our problem with this policy is that irrigation canals and ditches, and roadside drains in some cases may be considered waters of the state. To require a setback in the case of irrigation ditches would be wasteful of the land area and make siting of the facility more difficult. For this policy to mandate adequate protection of these areas from runoff is more appropriate. In Policy 3.4a you require a setback from public right-of-ways of 50 feet and 20 feet. We concur these are appropriate.

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Page DE-24 Policy DE 3.2h:

The use of the words *and modified dairies* in the first line could be understood to mean any change, whether or not additional water is to be used. An example would be changing from flushed feed lanes to a flushed free stall setup, or building a new hay barn or commodity shed. Changes such as these could be accomplished without using additional water, so a Hydrologic Sensitivity Assessment is not material in all cases. We suggest a replacement sentence reading: *All applicants for new dairies, or expansion of herd numbers beyond the original calculated capacity of existing dairies, shall retain....*

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Page DE-25 Policy DE 3.2i:

Same comment as for policy DE 3.2h. A new sentence could read: *All existing water supply wells at a proposed new dairy or expansion of herd numbers beyond the original calculated capacity of an existing dairy site....*

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Page DE-25 Policy DE 3.3a:

We believe the current language in this policy to be much too restrictive. We suggest the Natural Resources Conservation Service is qualified to conduct a wetland and habitat assessment that will meet the requirements of this section, but we do agree that any necessary mitigation plans should be presented for review by your department. The remainder of this section should be dropped.

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Page DE-27 Goal DE 4:

Western United Dairymen is confident that water quality can be maintained and effective nutrient management to protect water quality can be accomplished through compliance with existing regulation by the Regional Water Quality Control Board. We find the policies of Goal 4 to be redundant to those of the Regional Board, and therefore

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unnecessary. We suggest that referencing the requirements of the Regional Board will be sufficient to address Goal 4. Our comments below on the individual policies are intended to demonstrate our concerns with each, but we wish to make it clear that we prefer Goal 4 be rewritten to acknowledge the regulatory responsibilities of the Regional Board and avoid the current redundancies.

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Cont.

We have provided as an attachment, a copy of the Partnership Agreement between the State of California, various federal agencies, the University of California, and the California dairy industry, entitled Dairy Waste Management: An Integrated Approach to Education and Compliance. Western United Dairymen is a committed partner to this agreement. We suggest that voluntary participation by dairymen in the California Dairy Quality Assurance Program is an appropriate response to accomplish environmental stewardship. We hope that Kings County will recognize it as such.

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The following comments, as previously indicated, are submitted to identify our concerns with the individual policies as presented for review.

In the statement of Goal DE 4, we suggest the word *system* is unnecessary, unless you wish to say *systems and techniques of nutrient management* in your goal statement.

Page DE-27 Objective DE 4.1:

We prefer to use the term *Manure Nutrient Management Plan (MNMP)* until such time as the Natural Resources Conservation Service (NRCS) has fully developed the parameters of their official Comprehensive Nutrient Management Plan (CNMP). A core working group has recently been formed by the NRCS and is meeting to create a uniform CNMP for use in California, but a true CNMP is yet to be defined. You may wish to reference this policy to the NRCS plan when it becomes available. A CNMP is expected to go beyond the issues of a MNMP in that it will consider such issues as erosion, crop residues and others. A MNMP is considered to be a subset of a CNMP in the recent draft of USEPA's CAFO Rule, although they use the term Permit Nutrient Plan (PNP).

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Page DE-27 Policy DE 4.1a:

Suggest changing *CNMP* to *MNMP*.

Paragraph A. Delete all after the first sentence, as recent research indicates this particular practice may not be as beneficial as originally expected. We are able to provide a scientific citation at a later date, should you require it.

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Paragraph B.1. Some systems and management practices may wish to add additional water to their system for various purposes. If the system and management practices are in place to handle the added water, it should not be prohibited. We suggest adding words so that the first sentence reads: *Dairy siting and management practices shall divert clean water from contact with any manured area, unless such water is planned for and captured in the storage system. Such areas include, but are not limited to...*

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Paragraph B.2.d. Suggest adding *or NRCS technician*.

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Paragraph B.2.i. Stipulate *domestic* water supply wells and change setback to 100 feet.

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Paragraph B.3. Consistent with paragraph B1, we suggest adding *unless the runoff water has been planned for and is captured in the storage system* at the end of the first sentence of the section.

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Paragraph B.4. We would like to change this sentence to read as follows: *Manure shall be handled and treated consistent with evolving and cost effective technology so as to reduce the loss of nutrients....*

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Page 29 Policy 4.1b:

We recommend changing *CNMP* to *MNMP* as discussed earlier.

Paragraph B. As technologies and systems for handling manure continue to evolve and respond to environmental requirements, methods of application for utilization of manure nutrients, and the form of the nutrients themselves will change. Your third sentence, beginning with the word *Additionally*, seems to preclude sprinkler irrigation, which in some systems may well become the preferred method of application. We suggest the prior sentence would adequately cover your concern if you added *and minimize volatilization to the extent feasible* at the end. Then the third sentence could be eliminated.

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Paragraph C. This paragraph seems to say the same as Policy DE 4.1c. Please refer to comments below.

Page DE-30 Policy DE 4.1c:

We suggest this Policy statement and the preceding paragraph may be rolled together, as their purpose in both cases is to prevent the off-site migration of manure nutrients. However, care in rewriting must be taken so as to not preclude the legal runoff of uncontaminated stormwater, or stormwater in excess of a 25year, 24 hour storm. Additionally, an NPDES permitted dairy is allowed to discharge stormwater in a chronic storm event. Western United Dairymen is willing to provide staff to help work on alternative wording for this Policy at a later date.

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Page DE-30 Policy DE 4.1d:

We prefer simply mandating removal in 72 hours by statute, and eliminating the need to present a Dead Animal Management Plan (DAMP) or contract. The part of this Policy appearing on page DE-31 can then be deleted.

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Page DE-31 Objective DE 4.2:

We believe that the components of the previously required Nutrient Management Plan adequately provide for much of what appears to be the concern expressed in this objective for adequate land area to utilize the manure nutrients generated by the dairy. This objective, like some that follow, is beginning to become very intrusive into the management systems and practices on a subject dairy. We strongly urge that your Dairy Element set standards and goals, and allow the individual producer the freedom to comply in a manner of his/her own choosing.

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Page DE-31 Policy DE 4.2a:

Paragraph A.1. While we appreciate the reasons for your desire for a recordable and enforceable agreement for off-site use of manure, we are most concerned that this

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requirement is a major detriment to utilization of manure nutrients by area farmers. Western United Dairymen insists that we must do all we can to encourage the use of manure nutrients on row, tree and forage crops, especially if we can avoid the use of energy intense synthetic fertilizers. The language of this section should be greatly simplified. We suggest the following: *If additional land is needed to provide adequate land area to properly utilize the manure nutrients generated by a dairy, adequate assurances that sufficient agreements are in effect shall be provided.*

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Cont.

Paragraph A.1.a) through A.1.g): These items are unnecessarily detailed and we would respectfully suggest they be eliminated. They are a serious disincentive for off-site utilization of manure nutrients, as they cast a cloud on title to property.

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Page DE-33 Policy 4.2b:

As we currently have no *approved control of air emissions using best available control measures (BACM)* available to us, we wish to eliminate this part of the sentence. Air emission technology in agriculture is in its infancy, and we are pursuing the necessary research as quickly as possible. We also have concern about the term best available control measures from air regulations being misapplied to water issues by including it in this discussion. BACM ignores cost considerations. We note that in the new draft CAFO rule from USEPA, the term is now called best available technology *economically feasible* (BAT). The third sentence dealing with clean water diversion should be made consistent with comments submitted for Policy DE 4.1.a. paragraph B.3. by adding: *unless such water has been planned for when sizing the lagoon* at the end of the sentence.

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Page DE-33 Policy 4.3b:

We do not believe it is appropriate to require an Integrated Pest Management Plan (IPM). In October of 2000 Western United Dairymen submitted an application for a Pest Management Alliance research grant to investigate IPM on dairy farms throughout the state. The California Department of Pesticide Regulation did not fund our request, and has been unable to provide the technical support required to further explore and implement IPM on dairies. We suggest replacing the entire section with: *The County shall require that dairy operators provide a Pest and Vector Management Plan as part of the Technical Report submitted with each application to either establish a new dairy or expand an existing dairy. The County encourages the implementation of an Integrated Pest Management (IPM) system insofar as it is consistent with currently accepted dairy technology.*

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Page DE-34 Goal DE 5:

This part of the Revised Draft Dairy Element is where we have the most serious reservations. As currently written, several of the policies are unacceptable. We do not believe it is possible, and it certainly is not feasible, for any dairy to comply with the restrictions and demands presented in parts of this goal. We do not object to Goal DE 5, as stated. We also concur with Policy 5.1a. We do wish to point out air emissions and control strategies for all of agriculture, not just dairies, is an emerging science, and is still in its infancy. Our scientific community is not only unsure of what emissions are actually occurring, but they also are not confident of how much, when, and under what environmental conditions emissions may be a problem. Western United Dairymen does recognize that air emissions are an issue that must be addressed, and we are committed to

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pro-active efforts to address air quality, but we must insist that actions be science based. We do not wish to be trapped into utilizing technologies or management schemes that may be currently popular, but may later be demonstrated to be lacking in tangible results.

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To demonstrate our concern, at the August 27, 2001 meeting of the Agricultural Technical Committee of the San Joaquin Valley Air Pollution Control District (SJVAPCD), we were informed by Michael Benjamin of the California Air Resources Board (CARB), that the current factor for emissions of Reactive Organic Gases (ROG) from lactating dairy cattle was established at 12.8 pounds/cow/year, from a study done by USDA in 1977. Neither CARB nor USEPA has been able to find the study, and they are therefore unable to verify the parameters of measurement, or the contributing environmental influences such as relative humidity, wind factors, or soil moisture, all important to validate experimental results. An additional study was done on two dairies in Galt, near Sacramento, with results indicating the number was 5.2 pounds/cow/year. A third study was done in the South Coast Air Pollution Control District on five dairies. This study reported that emissions of ROG were negligible. With such conflicting results as reported by these studies, Western United Dairymen is most reluctant to accept definitive regulations without further investigation.

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We have provided as an attachment to these comments, a Voluntary (Incentive Based) Air Quality Compliance Program for Production Agriculture, prepared by the Agricultural Air Quality Task Force dated November 10, 1999. We suggest that this document replace the deleted Policies of Goal DE 5, and be referenced by adding a sentence to Policy 5.1a as follows: *New or expanding dairies will be required to comply with regulations regarding air quality as such regulations are adopted and implemented by the San Joaquin Valley Air Pollution Control District (SJVAPCD). The County strongly encourages participation in the Voluntary (Incentive Based) Air Quality Compliance Program prepared by the Agricultural Air Quality Task Force, dated November 10, 1999, until superceded or replaced by District or State Regulatory Law.*

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We will comment on individual paragraphs of DE 5, so that our specific concerns with each can be understood, but strongly suggest that it is much more appropriate to reference the regulations and procedures of the San Joaquin Valley Air Pollution Control District (SJVAPCD) rather than developing independent and redundant county requirements based on uncertain anecdotal information. Western United Dairymen submit that a complete rewrite of Goal 5 is necessary. We must make it most clear that our following comments are not to be considered as endorsement of the individual policies as changed, but rather to demonstrate our objections.

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Page DE-34 Policies DE 5.1b and DE 5.1c:

Western United Dairymen request that these two policies be deleted in their entirety. Several of the practices and technologies for control of air emissions and odors are based on very preliminary and unreplicated science, and as such cannot be defended or trusted. The effort to control suspected air emissions must be considered from a documented and holistic standpoint. Some of the practices required in the objectionable policies actually can be detrimental to efforts to protect water quality. Identifying specific practices or technologies is premature at this point in time. It is most important to not be so restrictive in the effort to meet air quality and permitting challenges that

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entrepreneurial innovation is prevented or that control methods established for air issues create adverse impacts on water quality.

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Cont.

Page DE-36 Policy 5.1d:

It does not seem necessary to exceed the requirements of the proposed Regulation VIII of the SJVAPCD. However, if this section should be retained, for additional clarity we would like *as deemed necessary* changed to *if deemed necessary* in the last sentence of the text paragraph preceding the numbered items.

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Page DE-36 Policy 5.1e:

This policy seems to be adequately covered by the proposed Regulation VIII regarding roadways and travel. It is our understanding movement of cattle is exempt from fugitive dust and PM10 requirements. Therefore we suggest this policy be deleted.

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Page DE-37 Policy 5.1f:

The Livestock Management Plan as outlined in Appendix J is unacceptable. It is entirely inappropriate for the Dairy Element to require documentation of management practices such as feeding regimes, genetic selection, feeding schedules, and herd health, as well as the others included in the Draft Plan. In addition, methane emissions from cattle are not well understood at present and control methods are extremely problematic. This policy is unnecessary and unreasonable. We ask that it be deleted.

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Page DE-37 Policy 5.1g:

As previously discussed, all that is required is to reference the control strategies of the SJVAPCD.

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Page DE-38 Policy 5.1h:

Consistent with the discussion of Policy 5.1e, we suggest this policy be dropped.

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Page DE-38 Policy 5.1i:

We recognize that Best Available Control Measures (BACM) are required due to the change in attainment status, but would like to see flexibility to return to Reasonably Available Control Measures (RACM) should attainment status improve. We recommend the second sentence be deleted and the first modified by replacing *Best Available Control Measures (BACM)* with *required control measures*. The actual regulatory requirement will then be applied as appropriate by the SJVUAPCD, as required by USEPA.

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Page DE-38 Policy DE 5.1k:

We suggest the policy be shortened to read *...removed or managed*. This would eliminate reference to the parts of the element where we have requested deletions.

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Page DE-39 Goal DE 6:

We believe Goal 6 should be eliminated and combined with Goal 7.

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Page DE-44 Goal DE 7:

Consistent with our recommendation for Goal 6 the following revised wording for Goal 7 is offered: *Establish a Dairy Monitoring Program in Kings County by establishing the Kings County Dairy Monitoring Office, housed in the Kings County*

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Planning Agency, to be charged with monitoring the effectiveness of mitigation measures and environmental protections provided by the Dairy Element of the Kings County General Plan.

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Cont.

The policies and objectives of Goal DE 7 need to be rewritten to provide that information developed by current regulatory agencies be utilized insofar as possible to avoid unnecessary duplication of effort. Any required reporting or log keeping should be considered proprietary information and remain on the dairy. We agree that such information should be provided by appointment for review by authorized regulatory agencies, but insist that such information be maintained at the dairy facility, and remain the property of the operator. Any log keeping activities that may subsequently be required should be in the nature of, or related to the occurrence of, a specific event or excursion that may have needed the attention of the operator. Western United Dairymen would appreciate an opportunity to consult with Kings County to further develop the parameters of operation of the proposed Dairy Monitoring Office so that any changes in the Dairy Element resulting from the current review process can be reflected as the Dairy Monitoring Office is created.

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Page DE-46 VI:

Again, for purposes of clarity we wish to provide additional wording at the end of the last sentence of the initial narrative paragraph as follows: *which will be limited to the actual expansion portion of the facility.*

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Page DE-46 Objective 8.1:

Consider adding the following sentence: *Certification by the California Dairy Quality Assurance Program (attached) shall be considered as equivalent to compliance with any program of conformance that may be developed by Kings County.*

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