

PLANNING COMMISSION  
RESOLUTION NO. 2017-16

A RESOLUTION APPROVING THE VESTING TENTATIVE PARCEL MAP DIVIDING TWO PARCELS TOTALLING 19.14 ACRES INTO THREE PARCELS, PROPERTY LOCATED ON EAST SIDE OF DALE ROAD AND NORTH OF BANGS AVENUE (JKB LIVING, INC)

WHEREAS, JKB Living Inc. has filed an application for a Vesting Tentative Parcel Map to divide two parcels totaling 19.14 acres located east of Dale Road and north of Bangs Avenue into three parcels; and

WHEREAS, said Vesting Tentative Parcel Map was received in the office of the Secretary of the Planning Commission on March 28, 2017, and was accepted for filing and deemed complete on April 17, 2017, in accordance with the provisions of Section 4-4.502 of the Modesto Municipal Code; and

WHEREAS, copies of said Vesting Tentative Parcel Map have been sent to the Stanislaus Elementary School and Modesto High School Districts, Modesto Irrigation District, the local utility companies, and the City Engineering and Transportation Department; and

WHEREAS, City services, including sewer and water facilities, are available; and

WHEREAS, a public hearing was held by the Planning Commission on June 19, 2017, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission has considered the Initial Study—Environmental Assessment No. EA/C&ED 2017-14, which concludes that pursuant to Section 15162 of the CEQA Guidelines, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The proposed vesting tentative parcel map is consistent with the General Plan and the Kiernan Business Park Specific Plan, because the proposed parcel configuration, provision of public utility and vehicular access easements, and street alignments are consistent with the adopted Specific Plan.
2. The proposed vesting tentative parcel map complies with all of the requirements of the Subdivision Map Act and of Title 4 of the Modesto Municipal Code regarding the subdivision of land.
3. The discharge of waste as a result of the proposed vesting tentative parcel map into the existing sewer system will not result in a violation of existing requirements by the California Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code of the State of California.

4. There are no substantial changes proposed in the project which result in new significant environmental effects in the Kiernan Business Park Specific Plan Amendment #4 EIR.
5. No substantial changes have occurred with respect to the circumstances under which the proposed project are undertaken which will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects in the Kiernan Business Park Specific Plan Amendment #4 EIR are required.
6. There is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence when the Kiernan Business Park Specific Plan Amendment #4 EIR was adopted which shows any of the following:
  - a. one or more significant effects which is not discussed in the Kiernan Business Park Specific Plan Amendment #4 EIR, or
  - b. significant effects which were previously examined will be substantially more severe than previously shown, or
  - c. previously infeasible mitigation measures or alternatives are now 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
  - d. mitigation measures or alternatives which are considerably different from those analyzed in the Kiernan Business Park Specific Plan Amendment #4 EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
7. The Written Checklist, Environmental Assessment No. EA/C&ED No. 2017-14, provides the substantial evidence to support findings 4-6, above, and the City hereby determines that no further environmental documentation is required for the proposed project.

BE IT FURTHER RESOLVED by the Planning Commission that the Vesting Tentative Parcel Map of property located east of Dale Road and north of Bangs Avenue accepted for filing in the office of the Secretary of the Planning Commission on April 17, 2017, be and it is hereby approved as submitted and as shown in red on the face of the map and subject to the following conditions:

1. Prior to recordation of the Parcel Map, a new street name to replace "The Plaza Way" shall be proposed and approved by both the City and the County.
2. Concurrent or prior to parcel map recordation, the applicant shall record an access agreement for traffic circulation between Parcel 1 and Parcel 3 of the tentative parcel map, and for pedestrian access westward from

Parcel 2 to Parcels 1 and 3, to the satisfaction of the Director of Community and Economic Development and in a form provided and approved by the City Attorney.

3. The KBPE Facility Master Plan (FMP) designates Dale Road as a 6-lane, principal arterial street with 108 ft. right of way. "Street A" (Plaza Way in the Circulation Plan of the Specific Plan) is designated as a minor arterial and transitions from 108 ft. right of way at Dale Road to 60 ft. right of way as it approaches Bruno Parkway. Bruno Parkway is designated a minor arterial with 60 ft. right of way. Prior to or concurrent to Parcel Map recordation, the project shall dedicate the street right of way at the project's frontage along "Street A", Dale Road and Bruno Parkway per the approved Facilities Master Plan.
4. Improvements shall be constructed in accordance to City Standards and to the satisfaction of the City Engineer prior to the first Certificate of Occupancy for development of any parcel created by the Parcel Map. A certificate giving notice of this requirement shall be placed on the Parcel Map. Improvements shall include but not be limited to the following:
  - a. Full street improvements are required along the project frontage on Dale Road per the FMP and City Standards. Full improvements include but are not limited to, street pavement, curb, gutter and sidewalk, street lights, storm drainage and fire hydrants.
  - b. The intersection of Dale Road and "Street A" shall be fully improved per the FMP including modifications and installation of new traffic signals. The southeast corner of the intersection does not need to include curb, gutter, sidewalk, landscaping or permanent storm drainage facilities.
  - c. Improvements to "Street A" shall transition from full width improvements at the Dale intersection to part-width street standards (see City Standard Detail No. 324). Construction of "Street A" to the part-width street standard is required all the way to Bruno Parkway.
  - d. Bruno Parkway shall be improved to the part-width street standard from "Street A" to the northern property line of Parcel 2.
  - e. All water system utilities shall be installed with right-of-way improvements. This project shall install proposed water system looping to the Dale Road and Bangs Avenue existing water infrastructure.
  - f. Upgrade of the proposed 10-inch water line in Bruno Parkway to 12-inch is strongly recommended.

- g. Wastewater system utilities shall be installed to convey project sewage to Bangs Avenue as shown in the FMP.
  - h. Fire hydrants shall be installed 300-feet on center as required by City of Modesto Standard for fire hydrant spacing and distribution.
  - i. Applicant shall provide street trees along "Street A" and Bruno Parkway spaced thirty five (35') feet on center and located within seven feet (7') of the sidewalk or curb.
- 5. Per the Bike Path Diagram of the Specific Plan, both Bruno Parkway and "Street A" are designated as Class II Bike Lanes (on-street paths) with 6-foot bike lanes within the 17.5-foot travel lane. Improvement plans shall demonstrate the provision of bike lanes on both streets in accordance to the Bike Path Diagram as shown on Figure III-8, Option 2 of the Specific Plan (Section III, Page 22), and on-street parking shall not be allowed.
- 6. Storm drainage is proposed to be managed entirely onsite including street runoff along the fronting ROW. At the time of development, storm drainage calculations shall be submitted with sufficient detail for review with project plan submittal to show how storm water will be managed according to City Storm Drainage Standards and other associated standards such as water quality and landscaping.
- 7. At the time of development, all existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the Utility Companies and City Engineer or designee. Easements for utilities, irrigation, and electrical lines to remain shall be reserved as required.
- 8. Prior to or concurrent with parcel map recordation, ten-foot-wide public utility easements shall be dedicated along the frontages of Bruno Parkway, and "Street A".
- 9. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit improvement plans conforming to design requirements of the most current edition of the City of Modesto Guidance Manual for Development, Stormwater Quality Control Measures and the City of Modesto Municipal Code.
- 10. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit a plan to integrate Low Impact Development (LID) principles into the project design. The plan shall retain, treat, and infiltrate the first 0.5" of stormwater run-off on site, and incorporate pervious landscape features into the project design wherever possible.
- 11. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit a plan to provide permanent, post-construction treatment (grass swale, bioretention, vegetative strip, or other approved

proprietary device) to remove pollutants from the first 0.5" of stormwater run-off from site.

12. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall submit a plan for trash enclosures to be sufficiently elevated to prevent stormwater run-on from parking lot and floor of enclosures shall be graded to drain into adjacent landscape areas.
13. Prior to the issuance of a Grading, Demolition, or Building Permit, Property Owner shall provide a signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Land Development Engineering, Stormwater for recording.
14. Prior to the issuance of a Grading, Demolition, or Building Permit, Property Owner shall obtain coverage for project under the State Water Resources Control Board (SWRCB) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, as amended by 2010-0014-DWQ and 2012-0006-DWQ.
15. The Construction General Permit requires the Property Owner to develop a Stormwater Pollution Prevention Plan (SWPPP) for the project. The SWPPP shall include a description of all erosion, sediment, and pollution control BMPs to be used at the construction or demolition site to prevent sediment and other sources of pollution from entering the City storm drain system as well as a site plan showing their placement. Prior to issuance of a Grading, Demolition, or Building Permit, provide one paper copy of SWPPP to Land Development Engineering, Stormwater.
16. All department Conditions of Approval for the project shall be included with building plans and shall be continuously maintained on-site during project construction to the satisfaction of the Chief Building Official.
17. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
18. At the time of issuance of a building permit, the developer shall pay development impact fees at the established rate. Such fees may include but are not limited to, sewer and water connection fees, community facility fees, building permit and plan check fees.
19. Except as amended herein or by reference, all development shall in accordance with the Kiernan Business Park Specific Plan.
20. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising

out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

In addition, the following recommended Conditions of Approval are mitigation measures from the Kiernan Business Park Specific Plan Amendment No. 4 Final Environmental Impact Report that are applicable to the project:

Mitigation Measure D.1 (Page 4 of the Mitigation Monitoring and Reporting Program):  
The construction plans for each group of buildings shall incorporate the following recommendations from the District to minimize emissions during construction phases:

21. The project developers shall review Regulation VIII of the SJVAPCD regulations and submit a compliance plan to the City of Modesto prior to commencing any phase of construction. The compliance plan must demonstrate that the current requirements of Regulation VIII will be implemented.
22. Prior to the issuance of construction contracts, the project developers shall perform a review of new technology, as it relates to heavy-duty equipment, to determine what, if any, advances in emissions reduction are available for use. It is anticipated in the near future both NO<sub>x</sub> and PM<sub>10</sub> control equipment will be available. The SJVAPCD should be consulted during this process.
23. Dust suppression shall be implemented on all disturbed areas, including inactive outdoor storage piles, by application of water, chemical stabilizer/suppressant, or covering with a tarp, vegetative ground cover, or other suitable cover.
24. Dust suppression shall be implemented following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles using water or chemical stabilizer/suppressant.
25. Dust suppression shall be implemented on all on-site unpaved roads, and off-site unpaved access roads used during the construction phase, using water or chemical stabilizer/suppressant.
26. All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions by application of water during the activity or by presoaking.
27. When materials are transported off site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.

28. The project developers shall limit traffic speed on unpaved roads to 15 miles per hour.
29. The project developers shall install sandbags or other control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.
30. The project developers shall install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site, to prevent track-out of soil to public roadways.
27. The project developers shall install windbreaks at windward sides of construction areas, if necessary to prevent wind-blown dust.
28. The project developers shall suspend excavation and grading activity when winds exceed 20 miles per hour.
29. The project developers shall limit the area subject to excavation, grading, and other construction activity at any one time.
30. The project developers shall ensure that the accumulation of mud or dirt is expeditiously removed from adjacent public streets at least once every 24 hours when construction activities are occurring (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions).
31. The project developers shall use alternative-fuel construction equipment, where feasible.
32. The project developers shall minimize idling time (e.g., to a 10-minute maximum).
33. The project developers shall limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use to the minimum practical.
34. The project developers shall replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set), where feasible.
35. The project developers shall take steps to curtail construction activity during periods of high ambient pollutant concentrations; this may include reducing construction activity during the peak hour of vehicular traffic on adjacent roadways or ceasing construction activity during days declared as Spare the Air days by the SJVAPCD.
36. The project developers shall manage activity tasks to reduce cumulative short-term impacts.

Mitigation Measure D.2.c (Page 15 of the Mitigation Monitoring and Reporting Program): The site design shall fulfill the following requirements to reduce emissions from energy consumption:

37. The project developers shall incorporate energy-efficient building design features including automated control systems for heating and air conditioning and energy efficiency to achieve a 20 percent reduction beyond the requirements of the Building Code (Title 24, California Code of Regulations), increased wall and ceiling insulation beyond Building Code requirements, light-colored roof materials to reflect heat, and energy-efficient lighting and lighting controls.
38. The project developers shall incorporate approved deciduous trees to provide shade on the south- and west-facing sides of buildings.
39. Natural gas burning units for space and water heating in the residential units shall use low-NOx space heaters and water heaters.

Mitigation Measure G.1a (Page 21 of the Mitigation Monitoring and Reporting Program): Implementation of formal CDFG guidelines (Staff Report on Burrowing Owl Mitigation) to avoid and minimize impacts to Burrowing Owls. In conformance with federal and state regulations regarding the protection of raptors, a habitat assessment in accordance with CDFG guidelines for Burrowing Owls should be completed prior to the start of construction. Burrowing Owl habitat on the project site and within a 500-foot (150 m) buffer zone should be assessed. If the habitat assessment concludes that the site and immediate vicinity lack suitable Burrowing Owl habitat, no additional action would be warranted.

However, if suitable habitat is located on, or immediately adjacent to, the site, all Burrowing Owl habitat should be mapped at an appropriate scale, and the following mitigation measures should be implemented:

40. In conformance with federal and state regulations regarding the protection of raptors, a pre-construction survey for Burrowing Owls, in conformance with CDFG guidelines, should be completed no more than 30 days prior to the start of construction within suitable habitat. Three additional surveys should also be completed per CDFG guidelines prior to construction.
41. No Burrowing Owls will be evicted from burrows during the nesting season (February 1 through August 31). Eviction outside the nesting season may be permitted pending evaluation of eviction plans and receipt of formal written approval from the CDFG authorizing the eviction.
42. A 250-foot (76 m) buffer, within which no new activity will be permissible, will be maintained between project activities and nesting Burrowing Owls during the nesting season. This protected area will remain in effect until August 31, or at the CDFG's discretion and based upon monitoring evidence, until the young owls are foraging independently.
43. If accidental take (disturbance, injury, or death of owls) occurs, the CDFG will be notified immediately.



Mitigation Measure AH-12 from the City of Modesto Urban Area General Plan MEIR should be applied to the project, as referenced by the Initial Study Environmental Checklist for the Kiernan Business Park FEIR prepared by Turnstone Consulting on June 15, 2007:

44. If archaeological resources are discovered at any time during construction, all activity shall cease, until the site is surveyed by a qualified archeologist. The survey shall include mitigation measures, which shall be implemented before construction resumes.

Mitigation Measure F.2 (Page 20 of the Mitigation Monitoring and Reporting Program):

45. Conduct Phase 1 Environmental Site Assessments, conduct site investigations, and implement remediation as necessary.

Mitigation Measure H.1 (Page 24 of the Mitigation Monitoring and Reporting Program):

46. The project proponent shall prepare an SWPPP for each development project under the Specific Plan (or one master SWPPP for all development) designed to reduce potential impacts to surface water quality through the construction period of all of the project components (whether or not the particular portion of the project disturbs more than 1 acre). The project SWPPP shall include and adequately address all elements in the State General Construction Permit (Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity, State Water Resources Control Board Order Number 99-08-DWQ).

BE IT FURTHER RESOLVED that the conditions of project approval set forth herein include certain fees, dedication requirements, reservations requirements, and other exactions, and that pursuant to Government Code Section 66020(d)(1), these conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions.

BE IT FURTHER RESOLVED that the applicant is hereby further notified that the ninety (90) days approval period in which a protest of these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a) can be filed, begins on June 19, 2017, and that if a protest is not filed within this ninety (90)-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on June 19, 2017, by Commissioner Morad, who moved its adoption, which motion was seconded by Commissioner Smith, and carried by the following vote:

Ayes:	Birring, Escutia-Braaton, Lucas, Morad, Smith
Noes:	None
Absent:	Pollard, Vohra
Recused:	None

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Original, signed copy on file in CEDD

Patrick Kelly, Secretary