

PLANNING COMMISSION
RESOLUTION NO 2019-16

A RESOLUTION APPROVING THE VESTING TENTATIVE PARCEL MAP OF PROPERTY LOCATED ON THE SOUTHSIDE OF THE INTERSECTION OF EAST GLENN AVENUE AND RELIANCE STREET (BUEHNER)

WHEREAS, Larry K Buehner has filed an application for a vesting tentative parcel map to divide a 18.5-acre property located on the south side of the intersection of East Glenn Avenue and Reliance Street; and

WHEREAS, said vesting tentative parcel map was received in the office of the Secretary of the Planning Commission on December 6, 2018, and was accepted for filing and deemed complete on January 3, 2019, 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 and Modesto School Districts, Turlock 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 May 6, 2019, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2019-01, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, 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 Vesting Tentative Parcel Map to create 6 parcels is consistent with the General Plan of the City of Modesto and the Subdivision Map Act of the State of California.
2. The proposed vesting tentative parcel map will not be materially detrimental to the public welfare or injurious to other property or improvements in the vicinity or zone in which the property is located and will not nullify the intent and purpose of the General Plan or regulations within the City of Modesto Municipal Code.
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. The proposed vesting tentative parcel map complies with all applicable requirements of the Subdivision Map Act and Title 4 of the Modesto Municipal Code regarding the subdivision of land.
5. The subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158 of the Public Resources Code, which was not identified in the Master EIR.
6. No new or additional mitigation measures or alternatives are required.
7. The subsequent project is within the scope of the project covered by the Master EIR.
8. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

BE IT FURTHER RESOLVED by the Planning Commission that the Vesting Tentative Parcel Map of property located at 1982 Crows Landing Road accepted for filing in the office of the Secretary of the Planning Commission December 6, 2018, 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. Property shall be subject to the Cost Sharing Agreement that was established between Larry Buehner and the City of Modesto prior to the recordation of the final map associated with TPM-18-003. This agreement is to participate in the "shared costs" of the acquisition of the property located at the southeast corner of Crows Landing Road and Glenn Avenue (APN: 086-012-026). "Shared Costs" are defined as those costs incurred through a purchase or condemnation acquisition that are above and beyond the following:
 - a. Fair market value of the property to be acquired;
 - b. The cost of removing the existing building (if not included in fair market value);
 - c. The value of required right-of-way dedication (if not included in fair market value);
 - d. Cost of installing street improvements, including curb, gutter and sidewalk, to ultimate width;
 - e. Costs to relocate the traffic signal, if applicable.

Each property is responsible to pay the "Shared Costs" assigned to them based on the previous agreement and the square footage of each parcel.

2. All improvements shall be constructed in accordance with City of Modesto Standard Specifications as required by the City Engineer or designee.
3. Improvement plans for required improvements shall be prepared by a Registered Civil Engineer and submitted for approval by the City Engineer

or designee. All improvements shall be constructed in accordance with the approved plans.

4. A certificate giving notice of improvement requirements with development of the parcels shall be placed on the Parcel Map.
5. Development will be required to connect to an existing 12-inch water main available for connection in E. Glenn Avenue.
6. Development will be required to connect to an existing 24-inch sewer main in E. Glenn Avenue that is available for connection. However, the applicant shall construct a sewer fly line per City standards to provide direct connection to the site. Since the existing sewer main in E. Glenn Avenue is a 30-inch trunk line, a direct connection to the trunk main is not permitted.
7. The storm drain runoff generated from new development shall be managed on-site according to current City standards.
8. 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.
9. 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 runoff on site, and incorporate pervious landscape features into the project design wherever possible.
10. 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.
11. 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.
12. 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
13. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall prepare and submit a Water Pollution Control Plan (WPCP) or Local SWPPP to Land Development Engineering, Stormwater for review. The WPCP or Local 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.

If the Construction or Demolition Activity will result in land disturbance of one acre or greater, project will require the following:

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. If Construction General Permit coverage is required, prior to the issuance of a Grading, Demolition, or Building Permit, Property Owner shall provide Waste Discharge Identification (WDID) number for project, and one paper copy of project Stormwater Pollution Prevention Plan (SWPPP) instead of WPCP or Local SWPPP to Land Development Engineering, Stormwater.
16. At the time of development, any public improvements that are missing, damaged or not to current City standards shall be designed and constructed per City standards in accordance with City Code (Article 7-1.701), standards and specifications. Such improvements may include, but not be limited to curb & gutter, drive approach, sidewalk, ADA access ramps, fire hydrants and street lights. All public improvement plans shall be designed by a Registered Engineer, reviewed and approved by the City Engineer prior to issuance of an Encroachment permit. A certificate giving notice of this requirement shall be placed on the Parcel Map.
17. Prior to or concurrent with Parcel Map recordation, the developer shall provide for access and public utility easements as required by the City Engineer.
18. Prior to issuance of a building permit, the applicant shall record an access agreement for on-site traffic circulation to access Parcel 1 from Parcel A as shown on the site plan, to the satisfaction of the Director of Community and Economic Development or designee and in a form provided by the Land Development Engineering Division and approved by the City Attorney.
19. Prior to issuance of a building permit, the applicant shall provide for access and enter into and file an access agreement that allows access for fire apparatus and public safety vehicles.
20. Prior to map recordation, the developer shall execute a Reciprocal Access and Maintenance Agreement, which shall provide for reciprocal vehicular and pedestrian access for both Parcel 1 and Parcel A, to the satisfaction of the Community and Economic Development Director or designee and in a form provided by Land Development Engineering Division and approved by the City Attorney.

21. At the time of development, all existing underground and above-ground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the City Engineer or designee. Easements for utilities, irrigation, and electrical lines to remain shall be reserved as required the City Engineer or designee.
22. Existing underground and overhead electric facilities and existing irrigation pipelines shall be removed, protected, or relocated as required by the Turlock Irrigation District and the City Engineer or designee.
23. Ten-foot-wide public utility easements, and planting easements located within the ten-foot-wide public utility easements, shall be dedicated along the street frontage as required by the City Engineer or designee.
24. All parcels shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
25. The Capital Facilities Fees payable at the time of the issuance of a building permit for any construction in this parcel map shall be based on the rates in effect at time of issuance of the building permit.
26. Prior to issuance of a building permit, developer must pay school impact mitigation fees and receive a "Certificate of Compliance for Developer Fees" from the Ceres Unified School District.
27. At the time of development, Developer will be required to adhere to all City of Modesto Standards that relate to landscaping and irrigation.
28. 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.

The following conditions are recommended mitigation measures from the City of Modesto General Plan Master EIR to be applied to the project:

29. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover. [GP MEIR Policy AQ-42]
30. All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant. [GP MEIR Policy AQ-43]

31. All land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking. [GP MEIR Policy AQ-44]
32. 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. [GP MEIR Policy AQ-46]
33. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.) (Use of blower devices is expressly forbidden.) [GP MEIR Policy AQ-47]
34. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant. [GP MEIR Policy AQ-48]
35. Within urban areas, track out shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday. [GP MEIR Policy AQ-49]
36. Any site with 150 or more vehicle trips per day shall prevent carryout and track out. [GP MEIR Policy AQ-50]
37. The project shall comply with the City's noise ordinance. Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields. Equipment that is quieter than standard equipment should be utilized. Haul routes that affect the fewest number of people should be selected. [GP MEIR Policy N-3]
38. SWPH-13, Table V-7-1(j): Implementation of formal CDFG guidelines 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 shall be completed prior to the start of construction. Burrowing owl habitat on the project site and within a 500-foot (150 m) buffer zone shall 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 shall be mapped at an appropriate scale, and the following mitigation measures should be implemented:

- a. In conformance with federal and state regulations regarding the protection of raptors, a pre-construction survey for Burrowing Owls, in conformance with CDFG guidelines, shall be completed no more than 30 days prior to construction within suitable habitat.
- b. 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.
- c. 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.
- d. If accidental take (disturbance, injury, or death of owls) occurs, the CDFG will be notified immediately.

If pre-construction surveys determine that Burrowing Owls occupy the site and avoiding development of occupied areas is not feasible, then habitat compensation on off-site mitigation lands should be implemented. Habitat Management (HM) lands comprising existing Burrowing Owl foraging habitat and breeding habitat should be acquired and preserved. An area of 6.5 acres (2.6 ha) (the amount of land found to be necessary to sustain a pair or individual owl) should be secured for each pair of owls, or individual in the case of an odd number of birds. As part of an agreement, the project applicant shall secure the performance of its mitigation duties by providing the CDFG with security in the form of funds that would:

- e. Allow for the acquisition and/or preservation of 6.5 acres (2.6 ha) of HM lands;
 - f. Provide initial protection and enhancement activities on the HM lands, potentially including, but not limited to, such measures as fencing, trash clean up, artificial burrow creation, grazing or mowing, and any habitat restoration deemed necessary by CDFG;
 - g. Establish an endowment for the long-term management of the HM lands; and
 - h. Reimburse the CDFG for reasonable expenses incurred as a result of the approval and implementation of this agreement.
39. Construction activities shall comply with the requirements of the City's Storm Water Management Plan under its municipal NPDES Stormwater permit, and the State Water Resources Control Board's General Permit for Discharges of Storm Water Associated with Construction Activity. (UAGP Policy V.E.3[h])'

BE IT FURTHER RESOLVED that the conditions of project approval set forth herein include certain fees, dedication requirements, reservation 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 the Government Code Section 66020(a) can be filed, beginning on the day of approval, and that if a protest is not filed within this ninety (90) day period complying with all 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 May 6, 2019, by Commissioner Lucas who moved its adoption, which motion was seconded by Commissioner Birring, and carried by the following vote:

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

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

Original, signed copy on file in CEDD

Steve Mitchell, Secretary