

## Chapter 3. Standards and Criteria by Which Development Will Proceed

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This chapter provides standards and criteria to be followed in the development of Empire North Unit 1, including supplemental development standards in compliance with Section 65451 (a)(3) of the California Government Code. This includes development standards for residential uses (i.e., minimum lot sizes, setbacks and height requirements), performance standards for noise attenuation, flood hazard, public safety and natural resource (biological and archaeological or historical) protection to address the unique features of the Plan area. Relevant General Plan policies addressing flood hazard, noise, and public safety and natural resource issues that affect the Plan area are presented in Table 3-1, followed by standards and criteria for residential development, use of open space, and supporting community facilities and services in the Empire North Unit 1 Plan area. For each of the general plan policies listed in Table 3-1, a corresponding description of how the Specific Plan complies with the policy is provided. The reference in parenthesis at the end of each compliance statement indicates where more detailed information may be found.

Table 3-1 Relevant General Plan Environmental and Cultural Resources Policies and Specific Plan Compliance

General Plan Land Use Policy	Specific Plan Compliance
New urban development shall be approved only when the developer shows it to be protected from "100- year" floods. (Section C, p. VI-3)	The 100-year-flood zone for Dry Creek has been designated as open space and will not be developed for residential uses. (Specific Plan, Chapter 1)
Undeveloped floodway and floodplain areas shall be preserved for non-urban use. (Section C, p. VI-3)	The Dry Creek floodway and flood zone is now part of the Dry Creek CPD and will be preserved for non-urban uses. (Specific Plan, Chapter 1)
The Focused Environmental Impact Report, for any Comprehensive Planning District located within a "Flood Potential Study Area" on Figure VI-2, shall include a Flood Hazard Analysis developed to mitigate all of the Flood Hazard impacts identified in the Master Environmental Impact Report. (Section C, p. VI-3)	The Empire North CPD is within the Flood Potential Study Area and a flood hazard analysis, included in the focused EIR, mitigated all flood hazards identified in the Master EIR. (EIR, Chapter 3)
The results of the Flood Hazard Analysis shall be incorporated into the project design of any Comprehensive Plan. (Section C, p. VI-4)	The Dry Creek flood zone is part of the Dry Creek CPD and designated as open space. (Specific Plan, Chapter 2)

<p>The Focused EIR for each Comprehensive Planning District shall include a Noise Analysis prepared by a qualified person experienced in the fields of environmental noise assessment and architectural acoustics. Noise mitigation measures shall be "used as a guide for establishing a pattern of land uses . . . that minimize the exposure of [present and future] community residents to excessive noise." (Section 65302(f), Government Code.) The noise contours developed by the Noise Analysis shall be used to determine the land use pattern appropriate within the Comprehensive Plan. (Section G, p. VII-16)</p>	<p>A noise analysis, prepared by a qualified noise specialist, was performed for the focused EIR. The noise analysis, which included development of noise contours, was the basis for mitigation measures, including sound barriers along Parker Road. These noise mitigation measures are included in the EIR and policies to reduce noise impacts are included in the specific plan. (EIR, Chapter 3)</p>
<p>For all lands within the Planned Urbanizing Area, site specific surveys shall be conducted by a qualified biologist to determine whether any sensitive natural communities or species are present within the proposed development area. These studies shall particularly focus on proposed development within any lands included within a potential biological resource study area, as delineated on Figure 7-1 in the Final Master Environmental Impact Report (Riparian Corridor Diagram).</p> <p>Surveys should be conducted at the appropriate season to best determine the likelihood of occurrence and should employ accepted methodologies as determined by the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS). The significant results of such surveys should be recorded onto the City's existing biological resources map for future planning purposes. (Section E, p. VII-8)</p>	<p>The Empire North CPD is within the Planned Urbanizing area and a site survey was conducted by a qualified biologist to determine the presence of any sensitive natural communities or species. The site survey did determine the presence of two sensitive species, Valley Elderberry Longhorn beetle (VELB) and Swainson's hawk. Mitigation measures to reduce impacts on these species to a less-than-significant level are included in both the specific plan and the EIR.</p> <p>Follow up surveys to determine whether Swainson's Hawk are nesting on the project site are required in the project EIR. Any significant results from those surveys will be recorded onto the city's existing biological resources map. (EIR, Chapter 3)</p>
<p>All habitat found to contain or potentially contain sensitive species shall be avoided and preserved unless doing so would create, isolate and/or fragment habitat that would not function adequately as judged by a qualified biologist and/or that the proposed development layout would be so constrained as to make the development financially infeasible; avoided habitat areas shall also be protected by fencing, signage and/or establishment of buffer zones as appropriate to the species or habitat involved. Generally, a minimum 100-foot buffer of undeveloped land would be necessary. The protected habitat shall contribute to the long-term conservation of the species and ecosystems on which they depend. (Section E, p. VII-8)</p>	<p>Most of the habitat found to contain or potentially contain sensitive species is within the area designated as open space, within the easterly extension of the Dry Creek CPD. A portion of Subarea A contains elderberry bushes, which provide suitable habitat for the VELB. Setbacks from the habitat, to protect the VELB, have been incorporated as mitigation measures in the EIR and are included in the policy summary of the specific plan. These measures are designed to protect habitat that contributes to the long-term conservation of sensitive species and ecosystems. (EIR, Chapter 3)</p>

<p>Where formally listed species are determined present, consultation shall be carried out with the CDFG and/or USFWS in accordance with the California and/or federal Endangered Species Acts. Where candidate or other special status category of species are involved, informal consultation with these agencies is recommended. The recommendations of these agencies shall be incorporated into the development plan, unless overriding considerations can be demonstrated. (Section E, p. VII-9)</p>	<p>The VELB is a species listed as threatened under the federal Endangered Species Act. Swainson's hawk is state listed as threatened under the California Endangered Species Act. Mitigation for VELB impacts includes obtaining a Section 10a permit from the USFWS. Mitigation for Swainson's hawk includes complying with California Department of Fish and Game Code Section 2081. These measures will provide for agency consultation in accordance with the state and federal endangered species acts. (EIR, Chapter 3)</p>
<p>Other measures to protect sensitive habitats may be implemented. Potential measures to be implemented may include those measures listed in Table 7-1 in the Final Master Environmental Impact Report. (Section E, p. VII-9)</p>	<p>Other implementation measures to be implemented include avoiding disturbance to nesting Swainson's hawk. (EIR, Chapter 3)</p>
<p>For all proposed development within an archaeological resource study area (as depicted on Figure 8-1 in the Master Environmental Impact Report), a combination of archival research, particularly through the Central California Information Center at Turlock, and preliminary surface field reconnaissance shall be employed to identify any areas that may have been used by Native Americans. Areas containing prehistoric deposits shall be mapped with evaluation of their significance following only in those areas where proposed development might affect the resources.</p> <p>Where proposed development could affect the resources, the City shall consult Table 8-1 in the Master Environmental Impact Report for the steps to be implemented. (Section F, p. VII-10)</p>	<p>The Empire North CPD is within the City's archaeological resource study area. A records search for the area within a 1-mile radius of the site was conducted at the Central California Information Center at Turlock. The search did not locate any formally recorded archeological or historical sites within the search area. A cultural resources surface field reconnaissance was also conducted. Results of the field reconnaissance are documented in the EIR. (EIR, Chapter 3, Section D.)</p> <p>Provisions for consulting Table 8-1 in the Master Environmental Impact Report have been incorporated into the EIR. (EIR, Chapter 3, Section D.)</p>

## A. IMPLEMENTATION OF LAND USE AND DEVELOPMENT STANDARDS

This section describes how the Specific Plan meets Government Code Section 65451(a) (3), specifically related to Development Regulations. This section also describes how the Specific Plan assists in the implementation of the Specific Plan Overlay Zone (SP-O Zone) (Article 19, Sections 10-2.1901 through 10-2.1905 of the Modesto Municipal Code).

### 1. Purpose and Intent of the Specific Plan Overlay Zone

The purpose of the SP-O Zone is to permit residential development within the Empire North Unit 1 Specific Plan area.

## 2. Application of the SP-O Zone

LU-7. The City Zoning map as allowed by Section 10-2.305 of the Modesto Municipal Code, "The Zoning Map", shall indicate SP-O zoning for the area of the Empire North Unit 1 Specific Plan designated for Village Residential Uses.

## 3. Effect of the SP-O Overlay Zone

LU-8. Development regulations within the Empire North Unit 1 Specific Plan shall correspond exactly to those regulations specified in Title X of the Modesto Municipal Code for the Low-Density Residential Zone (R-1), Article 5. These development regulations include permitted uses, plot plan uses, conditional uses, home businesses, garage sales, animals and fowl, height, front side and rear yards, street frontage, area, and lot width and lot coverage requirements.

## 4. Exceptions Adopted by This Specific Plan

LU-9. Any development proposed within 300 feet of the Dry Creek CPD shall conform to the following additional regulations, which shall be included on the tentative subdivision map:

*a. Lots adjacent to Dry Creek.* Lots that back up to Dry Creek are not required to have fences. However, if rear-of-lot fencing is built, it shall be of a wrought iron, see-through variety.

*b. Open Space Easements.* The area below the 100-year floodplain line on any subdivision map shall be included in an open space easement and shall be encumbered with the following conditions:

1. The easement shall be granted to the City with maintenance of the easement to be assumed by the homeowners of each lot or homeowners association.
2. Plant life, including but not limited to trees, shrubs, and grasses shall not be removed except with the prior approval of the City Parks and Recreation Director.
3. The "Open Space" area shall be maintained in its natural state.
4. The area shall be kept free of trash and refuse and shall be maintained in a visually attractive state.

5. The 100-year floodplain shall be shown on the final map.
6. The form of the "Open Space Easement" shall be prepared to the satisfaction of the City Attorney and recorded with the final map.

### 5. Subsequent Exceptions to Development Regulations

**LU-10. The Planning Commission may grant exceptions to any of the development regulations listed above, by resolution, based on the following considerations:**

**a. Exception Guidelines.** Exceptions may be granted to achieve the following purposes:

1. To encourage creative and efficient land uses.
2. To encourage mixed or multiple-use projects.
3. To permit variations from the density, height, and other standards in the various zones.

**b. Exception Examples.** Examples of such exceptions may include, but are not limited to, the following proposals:

1. Lot sizes smaller than 5,000 square feet.
2. Condominiums/community apartment projects/stock cooperatives.
3. Subdivisions with private streets, including gated subdivisions.
4. Senior housing facilities.
5. Residential care facilities.
6. Neighborhood commercial uses.
7. Attached housing.

**c. Submittal Requirements.** An application to the Planning Commission to adopt further exceptions to development standards shall include the following submittals:

1. A development plan and any elevations, perspectives, or floor plans necessary for project evaluation as determined by the Director.
2. A development schedule.
3. A tentative subdivision map if the project contains residential units.

**d. Conditions.** In granting any exceptions, the Planning Commission may impose conditions deemed necessary or desirable to maintain neighborhood compatibility and to protect the public health safety or welfare. Examples of conditions are height, signs, lot coverage, yards, and density and parking requirements.

## B. ENVIRONMENTAL PROTECTION MEASURES

A focused EIR prepared for Empire North Unit contains mitigation measures that are identified as policies in this Specific Plan. Mitigation measures derived from the focused EIR ensure that environmental impacts are offset to the maximum extent feasible.

### 1. Noise

Noise from Parker Road and the SFRR will affect the Plan area. Noise impacts from the segment of Parker Road adjacent to the Specific Plan area have been estimated based on 2015 traffic projections for Parker Road west of Santa Fe Avenue. Train noise contours have been taken directly from Figure 3-2 of the General Plan noise element. Figure 3-1 of the Specific Plan depicts noise contours on the project site from traffic on Parker Road and train passages on the SFR track along the west side of the project site. Noise from these sources exceed the City's standard of 60 dB- $L_{dn}$  for residential development and the 65-dB  $L_{dn}$  threshold that triggers additional study for projects exposed to noise.

Noise from aircraft using the East Side Mosquito Abatement District (District) airstrip to the northwest also affects the Plan area. A study has been conducted to evaluate aircraft noise impacts on the Plan area. Because of the type of aircraft used and the low volume of operations, noise contours or single-event noise levels could not be developed. However, the study concludes that significant noise impacts would occur in the Plan area.

**EP-1. Interior Noise Reduction.** Design of the proposed residential building shells will be evaluated to ensure that interior noise levels resulting from traffic, trains, and aircraft are 45-dB  $L_{dn}$  or less. Special construction design features needed to meet this interior noise level will be specified. Although design features (e.g., acoustical insulation) are available to address interior noise resulting from aircraft flyovers, design features to address significant exterior noise impacts from aircraft are not available.

The following Specific Plan Noise Policy shall be implemented to inform new residents of noise from the airstrip; however, this measure will not reduce the impact of exposure to noise from the airstrip to a less-than-significant level.

**EP-1(a).** The Avigation Easement required by Policy EP-7 shall also provide notice to future residents in Sub-area A regarding potential noise impacts caused by the airstrip.

## 2. Biological Resources

Development associated with the Specific Plan could result in potentially significant impacts on sensitive plant and wildlife habitats and species in the Plan area, including impacts on VELB located in Sub-area C and loss of Swainson's Hawk foraging habitat in A and C. Impacts on biological resources shall be mitigated by implementing the following Specific Plan Environmental Protection Policies, listed below; note that *either* EP-2 or EP-3 needs to be implemented.

**EP-2. Development within Sub-area C will avoid VELB habitat (i.e., elderberry shrubs) by prohibiting construction activities within 20 feet of elderberry shrubs. The tentative map will be designed to show the setback of 20 feet from the elderberry shrubs where no construction or disturbance shall occur. The City will ensure that this setback is shown on the tentative map and that construction and disturbance are prohibited in the setback during site development,**

OR

**EP-3. As an alternative to EP-2, Section 10a permits under the federal Endangered Species Act will be obtained by the proponent of any development that could affect VELB in Sub-area C. A Section 10a permit allows take of a listed species if a VELB mitigation plan (as outlined in Appendix E of the focused EIR) is prepared and implemented.**

Potential impacts on habitat for Swainson's hawk shall be mitigated by implementing the following policies.

**EP-4. A qualified biologist, as approved by DFG, shall be retained to conduct a Swainson's hawk survey within one year before commencing development within any of the three sub-areas of the site. If nesting Swainson's hawks could be affected by the project, nest monitoring by a qualified biologist during construction, as required by DFG, shall be conducted. Construction activities will be modified to avoid disturbance. Follow-up surveys should be conducted each construction year.**

**EP-5. Mitigation for the loss of Swainson's hawk foraging habitat, resulting from development of Sub-areas A or C, may consist of providing replacement habitat, payment of in-lieu fees for land acquisition in compliance with California Department of Fish and Game Code Section 2081, or other measures acceptable to DFG and the City (see Appendix E of the focused EIR).**

### 3. Archaeological or Cultural Resources

Development of Sub-area B of the Empire North Unit 1 area could result in potential impacts on archaeological or historical resources. The following Specific Plan Environmental Protection Policy, shall be followed to reduce such impacts.

**EP-6. A preliminary surface field reconnaissance will be conducted in Sub-area B prior to submittal of the tentative map for this area to identify any areas containing prehistoric deposits. Impacts to areas of significant resources that could be affected by development will be mitigated by adhering to the procedures presented in Table 8-1 of the Master EIR.**

### 4. Public Safety

Analysis of aviation related public safety issues is based on the Shutt Moen Associates report (1996) and describes how development of the Empire North Unit 1 near the East Side Mosquito Abatement District airstrip could result in safety impacts. Safety issues related to the operation of the District airstrip near proposed residential development are: 1) hazards to flight, 2) safety on the ground, and 3) exposure to hazardous materials. The following Specific Plan Environmental Protection Policies, shall be followed to address aviation-related public safety impacts.

**EP-7. An avigation easement shall be dedicated in Sub-area A that adopts restrictive covenants limiting the heights of trees and structures in accordance with FAR Part 77.**

**EP-8. The tentative map for Sub-area A shall be designed to provide an alternative emergency landing site adjacent to the railroad; additional protection could be afforded along the extended runway centerline where no sensitive land uses would be allowed (e.g., houses, community centers, assisted living facilities, etc.).**

**The minimum open space for the emergency landing strip should be approximately 75 feet wide and 300 feet long. The area should be generally level (free of landscaping berms) and free of trees, poles, structures, and overhead lines.**