

PLANNING COMMISSION
RESOLUTION NO. 2024-03

A RESOLUTION APPROVING THE VESTING TENTATIVE SUBDIVISION MAP TO DIVIDE TWO PARCELS OF APPROXIMATELY 34.7 ACRES LOCATED AT THE NORTHEAST CORNER OF FLOYD AVENUE AND OAKDALE ROAD INTO 191 LOTS.

WHEREAS, the City Council by Ordinance No. 3332-C.S., effective on October 28, 2003, approved Precise Plan No. 17 to allow development in this area of the Village One Specific Plan, in accordance with the requirements of the Village One Specific Plan; and

WHEREAS, on October 26, 2023, NRB Investments, LLC. Filed with the office of the Secretary of the Planning Commission an application for a Vesting Tentative Subdivision Map, PPA No. 17 Subdivision, to divide two parcels of approximately 34.7 acres located at the northeast corner of Floyd Avenue and Oakdale Road (APN: 077-008-036 and 077-008-037) into 191 lots, in accordance with the provisions of Section 4-4.401 of the Modesto Municipal Code; and

WHEREAS, copies of said vesting tentative map have been sent to the Sylvan Elementary School and Modesto High School Districts, Modesto Irrigation District, the local utility companies, the Land Development Engineering Division of the Engineering Department, and other City Departments and Divisions; and

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

WHEREAS, the area can be served by elementary schools in the Sylvan School District and by Fire Station No. 7 at 1800 Mable Avenue, 1.4 miles distant; and

WHEREAS, a public hearing was held by the Planning Commission on January 8, 2024, in Chambers, 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 2023-28, 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 proposed vesting tentative subdivision map, together with the provisions for its design and improvements, is consistent with the General Plan of the City of Modesto, and the Subdivision Map Act of the State of California.
2. The discharge of waste as a result of the proposed vesting tentative subdivision 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.

3. 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, that was not identified in the Master EIR.
4. No new or additional mitigation measures or alternatives are required.
5. The subsequent project is within the scope of the project covered by the Master EIR.
6. 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 Subdivision Map to divide two parcels of approximately 34.7 acres located at the northeast corner of Floyd Avenue and Oakdale Road into 191 lots accepted for filing in the office of the Secretary of the Planning Commission on October 26, 2023, 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 final map recordation, noise setbacks for parcels adjacent to Oakdale Road and Floyd Avenue shall be delineated on the final map. The setbacks shall adhere to the following:
 - a. Parcels adjacent to Oakdale Road shall provide a 35-foot traffic noise mitigation setback from the property line and install an 8-foot high decorative masonry sound wall. The total height of the sound wall is to be calculated from the Oakdale side of the wall and may be inclusive of a berm, etc. The sound wall shall have a 2-foot offset every 50 feet, as shown on the Vesting Tentative Subdivision Map.
 - b. Alternatively to Condition 1a above, the applicant may provide a new 'Noise Mitigation Analysis/Study' to determine the required setback and feasibility of a 7-foot high decorative masonry sound wall along Oakdale Road with a 2-foot offset every 50 feet, as shown on the Vesting Tentative Subdivision Map. Such a study shall be subject to the approval of the Director of Engineering or designee before final map recordation.
 - c. Parcels adjacent to Floyd Avenue shall provide a 7-foot high decorative masonry sound wall with a 2-foot offset every 50 feet, as shown on the Vesting Tentative Subdivision Map and provide a 12-foot traffic noise mitigation setback from the property line.
2. Any public improvements that are missing, damaged, or not to current City standards as identified by the City Engineer during the improvement plan process shall be designed and constructed per City standards in accordance with Modesto Municipal Code (Article 7-1.701) and the City of Modesto's Village One Facilities Master Plan. Such improvements may include, but not be limited to curb & gutter, drive approach, sidewalk, ADA access ramps, fire hydrants and

streetlights. 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.

3. Frontage improvements along Oakdale Road shall be constructed per the Village One Facilities Master Plan.
4. Prior to final Map recordation, a 10 foot Public Utility Easement (PUE) is required along all existing and proposed street frontages, and a 15 foot PUE is required adjacent to the existing overhead lines along Floyd Avenue in order to protect existing overhead facilities and maintain necessary safety clearance. A 6 foot planting easement located within the 10 foot public utility easement shall be dedicated along all existing and proposed street frontages as required by the Director of Engineering Services and the utility companies.
5. Prior to final map recordation, all utility easements as required by the utility companies serving the subdivision, shall either be shown on the final map or if recorded by a separate instrument, a copy of said instrument shall be provided to the City Engineer.
6. Right-of-way dedication on Oakdale Road and all street right-of-way and public utility easements shall be consistent with the Village one Specific Plan and Precise Plan 17.
7. These parcels, being in the Village One Facilities Master Plan area, are intended to connect to a positive storm drain main that discharges into the West basin. If this development intends to tie into this storm drain basin, it will need to provide calculations to confirm enough capacity available in the main they intend to connect to as shown in Condition #15.
8. Prior to the issuance of a Grading Permit, the hydraulic grade line of the entire system must be calculated from the basin through the Salonie Lane / Avenue "A" intersection. Consistent with the City of Modesto standards, the 100-year water surface must be contained within the top of curb grade (Provided finished grade pads are a minimum one foot above top of curb). The hydraulic grade line for the 10-year, 24 - hour duration storm shall be below the gutter pan (flowline). The applicant shall show contour or elevations on the improvement plans and submit detailed hydraulic calculations for review by the City Engineer.
9. 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
10. If the project is a Significant Redevelopment project, defined as a project that creates, adds, or exchanges (one type of impervious surface for another type of impervious surface) at least 5,000 square feet of impervious area on an already developed site, the following conditions will also apply:

- a. 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.
 - b. The dual use basin that this area drains to as part of the adopted Village One Specific Plan and Facilities Master Plan provides the necessary runoff treatment satisfying the conditions of the 2011 Storm Water Quality Manual for pretreatment.
11. The southwest corner of the intersection of Kodiak Drive/Orchard Park Way and Lot 83 must be designed to accommodate the existing single lane roundabout. The design shall address the issues of driveway placement, future splitter island locations, and existing ADA curb ramps north and east of Lot 83.
12. MID maintains and operates the Cavil Drain pipeline lying along the northern property line of the parcel with APN 077-008-037; applicant shall, to the satisfaction of MID and the City Engineer, relocate the Cavil Drain and provide appropriate easements. A 20-foot irrigation easement shall be provided along the northern 20 feet of Lot 1 as shown on the Vesting Tentative Subdivision Map. These 20 feet will be incorporated into Lot 1. Any alternative plan for the use of these 20 feet of Lot 1 shall meet the approval of the City Engineer and the Director of Community and Economic Development prior to implementation of such plan or issuance of any permits to implement such plan.
13. Additional traffic calming measures shall be required on Salonie Lane to the satisfaction of the City Engineer and which shall be shown on the improvement plans and constructed with the extension of Salonie Lane.
14. In order to limit areas where the water system is not looped, it is recommended to extend the 8-inch water main which dead ends at southernmost portion of proposed Salonie Lane and connect at the northeast corner of the intersection between Oakdale Road and Floyd Avenue.
15. Applicant shall use the existing 8" fly line available for properties fronting Orchard Parkway. Lots 69, 70, and 71 will require a new 8" fly line as the existing 8" sewer fly line does not extend to these lots.
16. Applicant shall provide calculations to confirm whether the existing 36" storm drain line in Kodiak has enough available capacity to drain the full volume of the 100 year, 24-hour storm (R = 2.88 inches) for the development area. If additional detention is required by these calculations, applicant shall provide additional storage opportunities in the means of upsizing of the development's storm drain system.
17. Fences and walls shall be installed as required by the development and implementation standards of the Village One Specific Plan.

18. The open ended cul-de-sacs at the end of Salonie Lane and Avenue "G" that provide a pedestrian connection to Floyd Avenue and Orchard Park Way shall incorporate raised landscape planters similar to other open-ended cul-de-sacs in the developments adjoining this subject property. The open-ended cul-de-sacs shall be developed in accordance with Precise Plan No. 17, City of Modesto Standard Specification No. 315, and as approved by the City Engineer. The design for these open-ended cul-de-sacs shall be submitted to, reviewed by, and approved by the City's Parks Planning and Development Division, and shall accommodate Emergency Vehicle Access.
19. All landscaping, fences, and walls shall be maintained in good condition and the premises shall be kept free of weeds, trash, and other debris.
20. Applicant shall submit Landscape and Irrigation (L&I) plans for review and approval by the City's Parks Planning and Development (PPD) Division. L&I plans shall meet the current State of California Model Water Efficient Landscape Ordinance (MWELo) requirements, Modesto Municipal Code (MMC) requirements and City of Modesto standards at time of submittal.
21. Applicant shall install street trees every thirty-five to forty feet on center (35' - 40' o.c.) along all proposed perimeter streets (Oakdale Road, Floyd Avenue and Orchard Park Way). In locations where street trees already exist, applicant shall ensure that such trees meet City standards, up to and including replacement if necessary.
22. Applicant shall install one (1) street tree per residential lot unless on a corner lot which requires street trees every thirty-five to forty feet on center (35' - 40' o.c.) of the parcel's length.
23. Applicant shall install climbing vines on all walls, in a landscape planter, to discourage tagging.
24. Applicant shall provide signage with appropriate landscaping for Clear Vision Triangles at entrances. Within the triangle, the area between three (3) and eight (8) feet in height measured from top of curb adjacent to landscape shall be clear.
25. Low Impact Development (LID) control and treatment measures are encouraged to be planted with vegetation for erosion protection and sediment entrapment to collect/treat storm water run-off before entering the storm drain system. As referenced in condition 10.b, the dual use basin satisfies the conditions of the 2011 Storm Water Quality Manual for pretreatment.
26. The proposed project is located in the Village One #2 Community Facilities District (CFD No. 2004-1) and will be required to annex into the existing CFD prior to recordation of the final map.
27. The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2004-1.

28. Capital Facilities Fees (CFF) will be due and payable at the time a building permit is issued. Capital Facilities Fees are impact fees established to mitigate the impacts of new development as outlined in §66000 of the California Government Code.
29. 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 and capital facility fees, building permit and plan check fees.
30. Prior to final map recordation, the developer shall provide proper street names that have been cleared by Stanislaus County and the City of Modesto.
31. Prior to start of house vertical construction, all-weather, hard-surfaced roadways shall be constructed and maintained free of obstructions at all times during construction as required by Director of Community and Economic Development.
32. All existing underground and aboveground utilities, irrigation, and electrical lines shall be protected, relocated, or removed as required by the utility companies and the City Engineer or designee. Easements for utilities, irrigation and electrical lines to remain shall be reserved as required.
33. Except as amended herein, or by reference, all development shall be in accordance with the Village One Specific Plan and Precise Plan No. 17.
34. All 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.
35. 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 Modesto Urban Area General Plan Master Environmental Impact Report that should be applied to the project:

36. AQ-42: 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.

37. AQ-43: All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
38. AQ-44: 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.
39. AQ-46: 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.
40. AQ-47: 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.)
41. AQ-48: 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.
42. AQ-49: 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.
43. AQ-50: Any site with 150 or more vehicle trips per day shall prevent carryout and track out.
44. The following measures should be implemented at construction sites when required to mitigate significant PM10 impacts (note, these measures are to be implemented in addition to Regulation VIII requirements):
45. AQ-51: Limit traffic speeds on unpaved roads to 15 mph; and
46. AQ-52: Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent (1%).
47. AQ-53: Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.
48. AQ-54: Install wind breaks at windward side(s) of construction areas.
49. AQ-55: Suspend excavation and grading activity when winds exceed 20 mph. Regardless of wind speed, an owner/operator must comply with Regulation VIII's 20 percent (20%) opacity limitation.
50. AQ-56: Limit the area subject to excavation, grading and other construction activity at any one time.

51. 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.
52. SWPH-13: Burrowing owls are known to occur within the [MEIR] study area. Impacts to burrowing owls and their nest burrows must be avoided in order to comply with the Federal Migratory Bird Treaty Act (MBTA) and Department of Fish and Game (DFG) Code Sections 3503, 3503.5, and 3513. If any ground-disturbing activities occur during the burrowing owl nesting season (approximately February 1 through August 31), implementation of avoidance measures is required. DFG recommends that a preconstruction site survey be conducted no more than 30 days before the onset of any ground-disturbing activities. Further, if preconstruction surveys determine that during the nonbreeding season burrowing owls occupy the site, a passive relocation effort shall be installed. DFG's Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game 1995) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone of a minimum of 250 feet, unless a qualified biologist approved by DFG verifies through noninvasive methods that either: 1) the burrowing owls have not begun egg laying and incubation; or 2) that juveniles from the occupied nest are foraging independently and are capable of independent survival. Failure to implement this buffer zone could cause adult burrowing owls to abandon nests, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure. The DFG Staff report on Burrowing Owl Mitigation also recommends that a minimum of 6.4 acres of foraging habitat per pair or unpaired resident burrowing owl should be acquired and permanently protected to offset the loss of foraging and burrowing habitat.
 - a. 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:
 - i. 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.
 - ii. No Burrowing Owls will be evicted from burrows during the nesting season (February 1st through August 31st). 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.

- e. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.
 - f. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, back hoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), piledriving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.
 - g. Any construction, demolition, excavation, erection, alteration, or repair activity. In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.
55. N-3: 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.
56. Table V-8-1, Items b through f:
- b. Prior to excavation and construction, the prime construction contractor and any subcontractors shall be cautioned on the legal and/or regulatory implications of knowingly destroying cultural resources or removing artifacts, human remains, bottles, or other cultural materials from the project area.
 - c. The project sponsor shall identify a qualified archaeologist prior to any demolition, excavation, or construction. The City will approve the project sponsor's selection of a qualified archaeologist. The archaeologist would have the authority to temporarily halt excavation and construction activities in the immediate vicinity (ten-meter radius) of a find if significant or potentially significant cultural resources are exposed and/or adversely affected by construction operations.
 - d. Reasonable time shall be allowed for the qualified archaeologist to notify the proper authorities for a more detailed inspection and examination of the exposed cultural resources. During this time, excavation and

construction would not be allowed in the immediate vicinity of the find; however, those activities could continue in other areas of the project site.

- e. If any find is determined to be significant by the qualified archaeologist, representatives of the construction contractor and the City, the qualified archaeologist, and a representative of the Native American community (if the discovery is an aboriginal burial) would meet to determine the appropriate course of action.
 - f. All cultural materials recovered as part of a monitoring program would be subject to scientific analysis, professional museum curation, and a report prepared according to current professional standards.
57. S-D 7: New development shall comply with City requirements for conveyance, retention and detention. New development shall include onsite storage of stormwater as necessary. Rockwells shall not be allowed for new development except at infill areas smaller than three acres where no other feasible alternative is available. (UAGP Policy V-E.3[f])
 58. S-D 9: 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])
 59. FWQ-13: 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])
 60. Prior to excavation and construction, the prime construction contractor and any subcontractors shall be cautioned on the legal and/or regulatory implications of knowingly destroying cultural resources or removing artifacts, human remains, bottles, or other cultural materials from the project area.
 61. The project sponsor shall identify a qualified archeologist prior to any demolition, excavation, or construction. The City will approve the project sponsor's selection of a qualified archeologist. The archeologist would have the authority to temporarily halt excavation and construction activities in the immediate vicinity (ten-meter radius) of a find if significant or potentially significant cultural resources are exposed and/or adversely affected by construction operations.
 62. Reasonable time shall be allowed for the qualified archeologist to notify the proper authorities for a more detailed inspection and examination of the exposed cultural resources. During this time, excavation and construction would not be allowed in the immediate vicinity of the find; however, those activities could continue in other areas of the project site.
 63. If any find is determined to be significant by the qualified archeologist, representatives from the construction contractor and the City, the qualified archeologist, and a representative of the Native American community (if the discovery is an aboriginal burial) would meet to determine the appropriate course of action.

64. All cultural materials recovered as part of a monitoring program would be subject to scientific analysis, professional curation, and a report prepared according to current professional standards.

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 January 8, 2024, 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.

BE IT FURTHER RESOLVED by the Planning Commission that the Secretary of the Planning Commission is hereby directed to file with the Stanislaus County Clerk a Notice of Determination in regard to the environmental impact of the proposed subdivision.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on January 8, 2024, by Russell, who moved its adoption, which motion was seconded by Vazquez, and carried by the following vote:

Ayes:	Black, Russell, Shanks, Silva, Vazquez
Noes:	None
Absent:	Birring
Recused:	None

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

Signed copy on file in CED

Jessica Hill, Secretary

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