

PLANNING COMMISSION  
RESOLUTION NO. 2016-09

A RESOLUTION APPROVING THE VESTING TENTATIVE PARCEL MAP OF PROPERTY LOCATED AT 2706 KIERNAN AVENUE (M&B BRUNO FAMILY LP)

WHEREAS, M&B Bruno Family LP has filed an application for a Vesting Tentative Parcel Map to divide 19.03 acres located at 2706 Kiernan Avenue into six parcels; and

WHEREAS, said Vesting Tentative Parcel Map was received in the office of the Secretary of the Planning Commission on October 27, 2015, and was accepted for filing and deemed complete on November 24, 2015, 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 Union and Modesto City 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 April 4, 2016, 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 2016-04, which concludes that no major revisions to the previously-certified Kiernan Business Park Specific Plan Amendment #4 Program EIR (SCH No. 2007062071) are needed as a result of the project, and that, pursuant to Section 15162 and 15164 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 or a substantial increase in the severity of previously identified significant effects and, therefore, no major revisions to the Kiernan Business Park Specific Plan Amendment #4 EIR are required.
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 and, therefore, no major revisions to 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 Initial Study, Environmental Assessment No. EA/C&ED No. 2016-04, 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 at 2706 Kiernan Avenue, accepted for filing in the office of the Secretary of the Planning Commission on October 27, 2015, 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. Improvements, including but not limited to the extension of Healthcare Way and Bruno Parkway and the installation of street improvements such as street lights, ADA access ramps, and fire hydrants along these frontages, shall be constructed in accordance to the 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. A 12-inch water main shall be constructed in Health Care Way and in Bruno Parkway. The water main in Bruno Parkway shall be extended to Bangs Avenue to connect to the existing 20- inch water main. A public utility easement shall be dedicated to the City across the properties to the south to contain the new water main.
  - b. An 8-inch sewer main shall be constructed in Health Care Way and a 10- inch in Bruno Parkway. The main in Bruno Parkway changes to a 12- inch according to FMP and extends to connect to the existing 30 – inch main in Bangs Avenue. A public utility easement shall be dedicated to the City across the properties to the south to contain the new sewer main.
  - c. Storm drain shall be designed and constructed to Kiernan Business Park Facilities Master Plan and its amendment.
  - d. Fire hydrants shall be installed 300-feet on center as required by City of Modesto Standard for fire hydrant spacing and distribution.
2. Prior to recordation of a Parcel Map, a 15-foot wide vehicular access and public utility easement shall be dedicated along the western lot line of Parcel 6.
  3. Prior to recordation of a Parcel Map, a notation shall be placed on the map that access along the northern lot line of Parcel 6 to Kiernan Avenue is restricted.
  4. 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.
  5. Prior to or concurrent with parcel map recordation, ten-foot-wide public utility easements shall be dedicated along all street frontages.
  6. Prior to or concurrent with parcel map recordation, a fifteen-foot-wide public utility easement shall be dedicated along Kiernan Avenue in order to protect the existing 12kv overhead electrical lines.
  7. Prior to or concurrent with parcel map recordation, a fifteen-foot-wide irrigation easement located north and adjacent to the proposed ten-foot PUE for the Chappell ID pipeline shall be dedicated to MID by separate instrument and noted on the Parcel Map.

8. The proposed project is included in the Kiernan Business Park East Community Facilities District (CFD), which is currently in the formation process. The CFD will need to be in place before recordation of any final maps or issuance of a building permit, whichever happens first.
6. 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 City of Modesto Guidance Manual for Development, Stormwater Quality Control Measures.
7. 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.
8. The General Construction Permit requires the Property Owner to develop a Stormwater Pollution Prevention Plan (SWPPP) for the project. Prior to issuance of a Grading, Demolition, or Building Permit, provide one paper copy of SWPPP to Land Development Engineering, Stormwater.
9. 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. Floor of enclosures shall be graded to drain into adjacent landscape areas.
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 and infiltrate the first 0.5" of stormwater runoff 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, 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, Property Owner shall provide a signed and notarized Stormwater Treatment Device Access and Maintenance Agreement to Land Development Engineering, Stormwater for recording.
13. 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.

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:

14. 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.
15. 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. (Information is available at CARB's website <http://www.arb.ca.gov/msprog/aftermkt/aftermkt.htm>.) Recently, CARB initiated a number of incentive programs to offer funds for retrofitting existing heavy-duty engines in public and private fleets to reduce PM and NOx emissions. CARB has evaluated and certified retrofit systems to be used in PM or NOx incentive programs. (Applicants who plan to participate in any of the CARB's retrofit programs may obtain additional information by viewing the CARB's Diesel Mobile Programs website at <http://www.arb.ca.gov/diesel/mobile.htm>.) The SJVAPCD should be consulted during this process.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.

21. The project developers shall limit traffic speed on unpaved roads to 15 miles per hour.
22. 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.
23. 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.
24. The project developers shall install windbreaks at windward sides of construction areas, if necessary to prevent wind-blown dust.
25. The project developers shall suspend excavation and grading activity when winds exceed 20 miles per hour.
26. The project developers shall limit the area subject to excavation, grading, and other construction activity at any one time.
27. The project developers shall ensure that the accumulation of mud or dirt (track-out) is expeditiously removed from adjacent public streets if it extends more than 50 feet from the construction site or 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).
28. The project developers shall use alternative-fuel construction equipment, where feasible.
29. The project developers shall minimize idling time (e.g., to a 10-minute maximum).
30. 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.
31. The project developers shall replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set), where feasible.
32. 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.
33. The project developers shall manage activity tasks to reduce cumulative short-term impacts.

34. 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:

- 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, 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.
  - 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.
35. 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:
- a. 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.

36. Conduct Phase 1 Environmental Site Assessments, conduct site investigations, and implement remediation as necessary.
37. 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 April 4, 2016, 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 April 4, 2016, by Commissioner Carter, who moved its adoption, which motion was seconded by Commissioner Vohra, and carried by the following vote:

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

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

Original, signed copy on file in CEDD  
Patrick Kelly, Secretary