

PLANNING COMMISSION
RESOLUTION NO. 2017-22

A RESOLUTION APPROVING THE VESTING TENTATIVE SUBDIVISION
MAP OF VILLA D' ESTE (KIMBERLY KUPPENS)

WHEREAS, the City Council adopted the Village One Specific Plan, a 1,780-acre area of land adjoining the northeast portion of the City of Modesto, on October 16, 1990; and

WHEREAS, the City Council by Ordinances No. 3349-C.S, effective on May 25, 2005, approved Precise Plan No. 3, rezoned Precise Plan No. 13 area from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O to allow development in this area in accordance with the requirements of the Village One Specific Plan for Single-Family Residential development; and

WHEREAS, an application for the Villa D' Este Small Lot Subdivision Vesting Tentative Subdivision Map, to divide a 7.19 acre lot into 32 street-accessed single-family small residential lots and a 3.26 acre remainder within Precise Plan No. 13, located east of Roselle Avenue and north of Kodiak Drive, was filed by Kimberly Kuppens on June 15, 2017, in accordance with Chapter IV-D(3) of the Village One Specific Plan; and

WHEREAS, said Vesting Tentative Map was received in the office of the Secretary of the Planning Commission on June 15, 2017, and was accepted for filing and deemed complete on July 26, 2017, 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, and the City Engineering and Transportation Division; 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. 9 at 4025 Fara Biundo Drive, about 2.5 miles distant; and

WHEREAS, a public hearing was held by the Planning Commission on September 18, 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 certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2017-20, 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, the Village One Specific Plan, 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 Map of Villa D' Este Subdivision, accepted for filing in the office of the Secretary of the Planning Commission on June 15, 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 a final map, the developer shall annex into Community Facilities District No. 2004-1 (Village One #2) ("CFD No. 2004-1") for the capital improvements and ongoing maintenance set forth in the Village One Specific Plan Infrastructure Financing Plan at the tax rate for the zone of said CFD to which the development is ultimately annexed; or alternatively, in the event complete annexation does not occur for any reason, developer may provide a funding mechanism for said capital improvements and ongoing maintenance to the same general standard as other similar capital improvements and on-going maintenance financed by said CFD, subject to approval of the funding mechanism by the City, such approval not to be unreasonably withheld.
2. Any public improvements that are missing damaged or not to current City standards shall be designed 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.

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. Ten-foot-wide public utility easements and planting easements located within the ten-foot-wide public utility easements shall be dedicated along all street frontages as required by the City Engineer or designee.
5. Prior to the Final Inspection, Building Inspection Division shall verify that all fireplaces and wood stoves in residential units where applicable are equipped to meet the performance and emissions standards set forth in Part 60, Title 40, Subpart AAA Code of Federal Regulations, February 26, 1988.
6. In accordance to Precise Plan No. 13, all deeds for lots sold in this subdivision shall contain the following statement:

"This lot is located near existing agricultural operations. Residents may be subjected to customary and accepted farming practices that produce noise, dust, smoke and other impacts. The grantee accepts the potential impacts of customary farming practices, which may include the application and use of various, chemicals through spraying, spreading or other customary means in accordance with applicable State and Federal regulations regarding such applications. The grantee also acknowledges the need to avoid activities that conflict with nearby farm uses."
7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. All aspects of this project to comply with current City of Modesto Standards and also current California Building, Electrical, Mechanical, Plumbing, Energy codes & Green Standards as adopted by the City of Modesto.
14. Site to comply with all associated site related handicap accessible provisions.
15. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
16. 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.
17. Except as amended herein, or by reference, all development shall be in accordance with the Village One Specific Plan and Precise Plan No. 13, as amended.
18. Prior to Certificate of Occupancy for any structure, cable television service shall be stubbed into all units.
19. Prior to start of 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.
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.

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

21. 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]
22. 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]
23. 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]
24. 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]
25. 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]
26. 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]
27. 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]
28. Any site with 150 or more vehicle trips per day shall prevent carryout and track out. [GP MEIR Policy AQ-50]
29. 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]

30. 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.

31. 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, 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 September 18, 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.

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 September 18, 2017, by Commissioner Smith, who moved its adoption, which motion was seconded by Commissioner Vohra, and carried by the following vote:

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

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

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