

PLANNING COMMISSION
RESOLUTION NO. 2020-13

A RESOLUTION APPROVING THE VESTING TENTATIVE PARCEL MAP OF
PROPERTY LOCATED AT 2900 SCENIC BEND (CALLA & MONTEROSSO)

WHEREAS, Dennis Monterosso and Patricia Calla filed an application for a Tentative Parcel Map to divide a one-acre parcel located at 2900 Scenic Bend, south of Scenic Drive into two parcels; and

WHEREAS, said Tentative Parcel Map was received in the office of the Secretary of the Planning Commission on April 14, 2015, and was accepted for filing and deemed complete on May 14, 2015, in accordance with the provisions of Section 4-4.502 of the Modesto Municipal Code; and

WHEREAS, copies of said Tentative Parcel Map were sent to the Modesto Elementary and High School District, Modesto Irrigation District, the local utility companies, and the City Land Development Engineering Department; and

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

WHEREAS, on June 15, 2015, the Planning Commission held a duly noticed public hearing in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing prior to presentation of evidence both oral and documentary, City staff requested a continuance to allow for sufficient time to review documents submitted by the representative of the neighboring property owners; and

WHEREAS, at the June 15, 2015 hearing, the Planning Commission continued the public hearing to the July 20, 2015 Planning Commission meeting in order to allow City staff an opportunity to resolve issues in regards to language within the staff report and resolution recommending Planning Commission approval of the proposed Tentative Parcel Map with an exception; and

WHEREAS, on July 20, 2015, the Planning Commission held a duly noticed public hearing in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, at which hearing prior to presentation of evidence both oral and documentary was received and considered; and

WHEREAS, at the July 20, 2015 hearing, the Planning Commission continued the public hearing to an indeterminate date at the request of the applicant to allow time for the applicant to resolve legal issues pertaining to existing access easements submitted by the representative of the neighboring property owners prior to the July 20, 2015 hearing; and

WHEREAS, the applicant has informed the City that they and the neighboring property owners have resolved the abovementioned issues, and on June 23, 2020 the applicant submitted a revised Tentative Parcel Map to divide the one-acre property located at 2900 Scenic Bend, south of Scenic Drive into two parcels, identified as Parcel 1 and a Remainder Parcel; and

WHEREAS, copies of the revised Tentative Parcel Map were sent to the Modesto Elementary and High School District, Modesto Irrigation District, the local utility

companies, the City Fire Department and the City Land Development Engineering Department; and

WHEREAS, in response to issues related to adequate emergency vehicle access raised by the Modesto Fire Department and Land Development Engineering, a further revised map was submitted by the applicant on September 9, 2020 that addressed those issues, thereby superseding the tentative parcel map originally filed on April 14, 2015 and its June 23, 2020 revision; and

WHEREAS, a public hearing was held by the Planning Commission on October 5, 2020, 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 2020-14, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2014042081) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required; and

WHEREAS, under Section 4-4.901 of the Modesto Municipal Code, the Planning Commission may vary the regulations relating to the subdivision of land by granting an exception.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. There are exceptional or extraordinary circumstances or conditions applicable to the property such as topography, fixed rights-of-way, unique location of easements, etc.

Due to realignment of Scenic Drive in 1976, the parcel in question and the adjacent parcels to the west and east were left without street frontage. The only access to this parcel and the adjacent parcels is through an existing private ten (10)-foot-wide access easement established in 1991; therefore, creation of a parcel with the required street frontage is not possible. The use of the existing ten-foot-wide private access easement remains an option for access, in addition to the proposed new 12-foot access from Scenic Bend for fire access.

2. Because of the unique nature of a particular subdivision concept, design innovations are proposed which meet the functional standards of the zoning and subdivision regulations without strict adherence to the requirements of this chapter.

The purpose of the requirement for street frontage is to ensure that parcels have access to a public street. Although the proposed parcel has no existing street frontage, the applicant has indicated on the map that access to the proposed parcel will be from the existing private access easement ten (10)-feet in width, previously established for both the project parcel and the neighboring parcel to the east, and fire access will be via the proposed new 12-foot wide fire access from Scenic Bend.

Thus, the easement and the proposed 12-foot wide fire access from Scenic Bend provides the functional equivalent of street frontage for the proposed parcel map.

3. In the case of a parcel map, the applicant is being denied the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity or zone in which the property is located.

Properties in the R-1 Zone are required to be a minimum of 5,000 square feet. The proposed Parcel 1 will be 20,956 square feet and the Remainder Parcel 23,079 square feet, which far exceeds the minimum lot size required in the R-1 Zone.

4. That the granting of the exception will not be materially detrimental to the public welfare or injurious to other property or improvements in the 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.

The creation of Parcel 1 will not terminate or modify the existing ten (10)-foot-wide private access easement; the proposed parcels otherwise meet all other standards of the R-1 Zone and will look and function much as a normal lot would; no physical changes to the site will be made by approving the proposed parcel map; and any future development of Parcel 1 will be required to meet all Zoning, Building Safety, FEMA, Fire and City of Modesto Standard Specifications of the Municipal Code, and all conditions of this map.

5. The proposed vesting tentative parcel map is consistent with the General Plan of the City of Modesto.
6. 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.
7. The proposed vesting tentative parcel map complies with all applicable requirements of the Subdivision Map Act and of Title 4 of the Modesto Municipal Code regarding the subdivision of land.
8. 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.
9. No new or additional mitigation measures or alternatives are required.
10. The subsequent project is within the scope of the project covered by the Master EIR.

11. 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.
12. The Initial Study, Environmental Assessment No. EA/C&ED 2020-11, provides the substantial evidence to support findings 8-11 noted above.

BE IT FURTHER RESOLVED by the Planning Commission that the revised Tentative Parcel Map of property located at 2900 Scenic Bend, accepted for filing in the office of the Secretary of the Planning Commission on September 9, 2020 and thereby superseding the tentative parcel map originally filed on April 14, 2015 and June 23, 2020, 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 Parcel Map, the recordation of property deeds reflecting the previously approved and recorded Lot Line Adjustment between this property and the adjacent properties to the east and west (APNs 067-034-009 and 067-034-012), Document No. 2019-0074889-00, Stanislaus County Records, shall be completed.
2. Prior to recordation of a Parcel Map, the Parcel Map shall note the 10-foot access easements between the parcels and the adjacent properties to the east and west with recorded document numbers identifying each easement.
3. Prior to or concurrently with Parcel Map recordation, a certificate giving notice that the new 12-foot wide access between Parcel 1 and the Remainder Parcel to Scenic Bend is for Fire Access and private residential use as a secondary driveway only, shall be placed on the parcel map.
4. Prior to recordation of a Parcel Map, the developer shall enter in a written agreement with the City of Modesto to assume all maintenance and liability of the 12-foot wide access between Parcel 1 and the Remainder Parcel to Scenic Bend, to the satisfaction of the Community and Economic Development Director and the City Engineer.
5. Proposed improvements shall not impede reciprocal access of adjacent properties, in accordance with existing agreements.
6. A certificate shall be placed on the Parcel Map stating that each parcel shall have separate water and sewer utility connections in accordance with the City of Modesto Standard Specifications and the City Engineer or designee, as well as each individual utility company's standards.
7. Prior to or concurrently with final Parcel Map recordation, public utility easements shall be dedicated and all existing utility sizes, locations and proposed tie in locations (including Scenic Drive), shall be shown on the map as required by utility companies and the City Engineer.
8. A certificate shall be placed on the Parcel Map stating that prior to issuance of a building permit, due to the property being located in the 100-year FEMA flood plain,

development shall be subject to review and conditions required by FEMA pertaining to flood protection requirements.

9. A certificate shall be placed on the Parcel Map stating that prior to issuance of a building permit, stormwater drainage and lot grading shall follow current City of Modesto standards for a residential development.
10. 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). 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.
11. An existing 33-inch sewer trunk line is located in the public right of way north of the existing ten-foot easement. Any proposed improvements including the proposed emergency vehicle access from Scenic Bend shall be approved by the City of Modesto Utilities Department prior to obtaining an encroachment permit from the City prior to any work being done in the public right-of-way.
12. Lot grading and disposal of all site drainage shall be designed per current City standards of the City of Modesto.
13. At the time of development, LID control and treatment measures shall be vegetated for erosion protection and sediment entrapment to collect/treat storm water run-off before entering the storm drain system. Storm water catchment and treatment basins shall be appropriately landscaped and irrigated to address the specific type of storm water control measure.
14. Prior to the issuance of a building permit, applicant shall submit Landscape and Irrigation (L & I) plans for review and approval by the City's Parks Planning and Development Division. L&I plans shall meet current State of California water use ordinance requirements, Modesto Municipal Code (MMC) requirements and City of Modesto standards at time of submittal.
15. A certificate shall be placed on the Parcel Map stating that prior to issuance of a building permit on Parcel 1, the following conditions will apply:
 - a. Fire hydrant spacing and distribution for this project is 500-feet on center. An onsite hydrant may be required.
 - b. Minimum fire-flow requirements for new development shall be as specified by applicable California Building and Fire Codes.
 - c. Fire mains, fire hydrants, check-valves, underground piping and installation shall meet City of Modesto Standards.
 - d. The 12-foot Fire Access between Scenic Bend and Parcel 1 and the Remainder Parcel shall be designed to support the imposed load of a 60,000 pound vehicle.

16. If a gate is proposed for the new Fire Access between Scenic Bend and Parcel 1 and the Remainder Parcel, a Knox box or other City approved lock will be required to control access, and the gate shall be placed to allow the storage of a fire vehicle outside of the roadway.
17. 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 City Engineer or designee. Easements for utilities, irrigation, and electrical lines to remain shall be reserved as required.
18. The project shall be subject to all conditions, requirements and recommendations from all other affected departments/agencies, provided on the attached reports/memorandums.
19. Prior to and after development, the lot shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
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.

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 October 5, 2020, 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 October 5, 2020, by Commissioner Vohra, who moved its adoption, which motion was seconded by Commissioner Shanks, and carried by the following vote:

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

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

Original, signed copy on file in CEDD
Steve Mitchell, Secretary