

PLANNING COMMISSION
RESOLUTION NO. 2022-11

A RESOLUTION APPROVING THE VESTING TENTATIVE MAP OF SNOW
PROPERTY (TIVOLI)

WHEREAS, by Resolution No. 2022-09 on March 21, 2022 the Planning Commission approved Area Plan No. 5 to allow development in this area of the Tivoli Specific Plan, in accordance with the requirements of the Tivoli Specific Plan (Project AREA-21-001); and

WHEREAS, Snow Properties LP has filed an application for a Vesting Tentative Subdivision Map, Snow Property (Tivoli), to divide 38 acres located on Sylvan Avenue west of McReynolds Avenue into 213 single-family residential lots and five landscape lots; and

WHEREAS, said Vesting Tentative Map was received in the office of the Secretary of the Planning Commission on October 1, 2021, and was accepted for filing and deemed complete on October 30, 2021, 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 ("MID"), the local utility companies, Modesto City Fire Department, and the City Engineering and Transportation Department; 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, 1.5 miles distant; and

WHEREAS, a public hearing was held by the Planning Commission on March 21, 2022, 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 received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2021-32, which concluded that the project is within the scope of the Tivoli Specific Plan Final EIR (SCH No. 2005072125) and that pursuant to Sections 15162, 15168(c) and 15182 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 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. As per Sections 15162, 15168(c) and 15182 of the California Environmental Quality Act ("CEQA") Guidelines, this project is within the scope of the projects covered by the Tivoli Specific Plan Final EIR and no new environmental document or findings are required by CEQA.
4. The project will have no new effects which were not examined in the Tivoli Specific Plan Final EIR and no new mitigation measures would be required.
5. There are no substantial changes proposed in the project, which will require major revisions of the Tivoli Specific Plan Final EIR.
6. There are no substantial changes occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the Tivoli Specific Plan Final EIR.
7. No new information, which was not known and could not have been known at the time the Tivoli Specific Plan Final EIR was certified as complete, has become available.
8. There are no specific features that are unique to the proposed project that require project-specific mitigation measures. Accordingly, the certified mitigation measures identified in the Final EIR will be sufficient for this project.
9. All feasible mitigation measures set forth in the Final EIR which are appropriate to the project shall be incorporated in the project.
10. The Initial Study, Environmental Assessment No. EA/C&ED 2021-32 provides the substantial evidence to support findings 3-9, noted above.

BE IT FURTHER RESOLVED by the Planning Commission that the Vesting Tentative Map of Snow Property (Tivoli) accepted for filing in the office of the Secretary of the Planning Commission on October 30, 2021, 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, new street names for "Street A", "Street B", "Circle C", "Street D" and "Circle E" shall be proposed and approved by both the City and the County.
2. Prior to recordation of a Final Map, improvement plans for required improvements shall be prepared by a Registered Civil Engineer and submitted for approval by the City Engineer or designee.

The improvement plans shall include but not be limited to the following improvements for the perimeter streets of the project:

Aria Way

- a. Dedication of Aria Way to part-width right-of-way (half of ultimate ROW plus additional ROW for minimum 24-feet of pavement).
- b. Dedication of ROW for a future new roundabout at the intersection of Aria Way and Sylvan Avenue.
- c. Dedication of ROW for a future new roundabout at the intersection of Aria Way and Street A of the tentative subdivision map.
- d. Street improvements to part-width standard including installation of curb, gutter, sidewalk or paseo and landscaping along the easterly ROW of Aria Way. The westerly ROW shall include a berm and piping to handle storm drainage.

Improvements shall also include a Major Gateway feature at the corner of Aria Way and Sylvan Avenue, as provided by Chapter 5 of the Tivoli Specific Plan (Pages 193-A through 193-F).

Improvements shall also include interim intersection control for Aria Way at Sylvan Avenue, including but not limited to stop sign for southbound Aria Way traffic at Sylvan Avenue, to the satisfaction of the City Engineer or designee.

McReynolds Avenue

- e. Dedication of the westerly ROW of McReynolds Avenue to required half of ultimate ROW.
- f. Dedication of ROW for a future new roundabout at the intersection of McReynolds Avenue and future "Street C" to the east of the tentative subdivision map.
- g. Street improvements to part-width standard, including installation of curb, gutter, sidewalk and landscaping along the westerly ROW of McReynolds Avenue.

Improvements may also include reconstruction of the existing McReynolds Avenue to meet City standards up to the current eastern edge of pavement, if determined to be necessary by the City Engineer or designee.

Sylvan Avenue

- h. Dedication of the northerly ROW of Sylvan Avenue immediately adjacent to the project, and installation of street improvements including but not limited to curb, gutter, sidewalk and landscaping. Sylvan Avenue is considered a shared facility, and eligible shared improvements can be reimbursed by the Community Facilities District.

- i. Intersection control for McReynolds Avenue at Sylvan Avenue shall include a stop sign for southbound McReynolds Avenue to Sylvan Avenue.
- j. Landscaped median improvements along the centerline of Sylvan Avenue if determined to be feasible by the City Engineer. Left turn lanes to northbound and southbound McReynolds shall be provided if determined by the City Engineer.

Street A

- k. Dedication and improvement of the full-width of Street A, including installation of curb and gutter at minimum along the northerly ROW of Street A, and installation of curb, gutter, paseo and landscaping along the southerly ROW of Street A, in accordance to the adopted Circulation Diagram and street cross-sections of the Tivoli Specific Plan as amended.

Street A improvements shall also include the placement of a stop sign at the northwest corner of Street A and McReynolds Avenue for southbound McReynolds Avenue traffic, as shown in red on the site plan.

- 3. The improvement plans shall include but not be limited to the following utility infrastructure improvements as follows:
 - a. Extension of storm drain lines in Aria Way to the future dual-use storm drainage basin located to the north of the development:
 - i. The developer shall provide plans and calculations for storm water basin(s) and storm water management requirements per City Standards to serve this development, making provision for buildout of Tivoli Specific Plan.
 - ii. Storm drainage conveyance system shall be adequately sized to handle flows, including any off-site flows, to the satisfaction of the City Engineer or designee.
 - iii. The term "Central Basin", though used in the Tivoli Facilities Master Plan (FMP), shall be replaced with another name to avoid confusion since the name "Central Basin" is already in use within the City. Names such as "Main Basin" or "Tivoli Basin" or similar must be used for clear reference.
 - b. The proposed 18-in. storm pipe in Sylvan Ave may be aligned too close to the proposed parallel 12-in. water main. Developer shall ensure in plan check phase that there is adequate spacing for all proposed utilities, and if not, then propose use of special pipe materials allowed per City Standards.
 - c. The Aria Way proposed water main should be 12-in. instead of 16-in. The City will install a new 12-in. water main in Sylvan Ave from Oakdale Rd to Aria Way to replace an existing older 8-in. main. The

developer shall install the 12-in. water main in Aria Way along the project frontage and connect to the new 12-in. Sylvan water main installed by the City.

- d. The developer shall install the proposed 12-in. water main in Sylvan Ave from Aria Way to McReynolds and connect to the new 12-in. Sylvan water main installed by the City.
- e. The existing 16-in. water main in Aria Way will not be allowed new taps. The new 12-in. Aria Way water main shall be the distribution main to loop the new development. Connection details can be determined in plan check/review phase.
- f. The existing and proposed sewer trunks in Aria Way should be 24-in., not 27-in. The City installed a 27-in. sewer trunk in Sylvan Ave and approx. 250-ft of 24-in trunk in Aria Way.
- g. The developer shall demonstrate in plan check phase that the sewer system is adequately sized to handle sewer flow through the proposed development from future areas to the east of McReynolds Ave.
- h. Street sections (as many as are needed) for Aria Way showing all utility alignments should be provided to indicate vertical and horizontal spacing. The same may be necessary for Sylvan Ave.
- i. Relocation and preservation of the Cavil Drain as required by the Modesto Irrigation District and the City Engineer or designee.

The existing 30-in. MID pipe in Sylvan Ave is not shown on the tentative subdivision map, and the proposed MID pipe in Sylvan Ave from Aria Way to McReynolds Ave is labeled 42-in. The developer shall confirm if a new MID pipe alignment along Sylvan Ave is required and size of pipe per MID comments.

- j. Installation of fire hydrants at 300-foot intervals along all streets in this subdivision.
 - k. Installation of arterial and collector street trees, landscaping and paseo greenway landscaping in accordance to Sections 3.4.9 through 3.4.12.4 and Exhibit 3.19 of the Specific Plan.
4. Prior to recordation of a Final Map, the developer shall take all actions to secure and establish a mechanism for the funding of the installation of some or all of the below listed facilities (this is expected to be by the creation of a new City Infrastructure Mello-Roos Community Facilities District (CFD)), and ongoing maintenance of these items and/or facilities through the creation of a new City Maintenance Mello Roos CFD. The items considered for inclusion into one of both of these CFDs include, but are not limited to the following:
- a. The dual-use storm basin to be located on Aria Way;

- b. Improvements of up to one-half of Claratina Avenue, Oakdale Road, Roselle Avenue, Sylvan Avenue and part or all of the Collector Streets in the Tivoli Specific Plan Area. The amount of these streets to be included in the Infrastructure CFD will be determined in consultation with the City.
 - c. Installation of future roundabouts on the main collector streets including but not limited to: Bridgewood Way/Wood Sorrel Drive, Aria Way/Street A, Street A/Street B, Aria Drive/Street D, Aria Way/Sylvan Avenue, Aria Way/Street A, and McReynolds Avenue/future Street C.
 - d. Any facilities and improvements, designated as CFD responsibility improvements, as listed in (but not limited to) the Tivoli Specific Plan Area – Summary of Facilities Master Plan Cost Estimates.
 - e. The developer and City will work toward a comprehensive list of any facilities and improvements, and ongoing maintenance will be determined during the CFD formation process and listed in the CFD’s Public Report.
 - f. Initial CFD formation costs will be reimbursed to the party funding the formation in the first CFD Bond sale.
5. 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 and 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.
 6. All fire hydrants and fire apparatus access roads meeting the requirement for “all weather” will need to be installed prior to combustible construction materials being brought into the site.
 7. The easterly ROW of Aria Way, the southerly ROW of Street A, and the westerly ROW of McReynolds shall have “No Parking” signs installed at regular intervals, except where new residential lots front McReynolds Avenue; a seven (7) foot wide parking lane shall be provided along those street-fronting lots.
 8. With recordation of a Final Map, the Map shall demonstrate via note or building setback line that all rear-yard setbacks for lots that back up to Sylvan Avenue shall be at least fifteen (15) feet, in accordance to the setback standards outlined in Section 10-4.108(c) of the City’s Zoning Code.
 9. Future home buyers and prospective residents of the Tivoli Specific Plan shall be provided disclosure that they are subject to noise, dust, odor and other impacts from adjacent agricultural operations. Such notice shall be placed on the Final Map at recordation.

10. Prior to Certificate of Occupancy of any structure, fences and walls shall be installed in accordance to the design standards of the Tivoli Specific Plan, Section 5.7, Community Wide Walls and Fencing Guidelines and Standards, including but not limited to the following standards:
 - a. A minimum eight (8) foot high decorative concrete masonry wall with cap treatment shall be provided along the Sylvan Avenue frontage in accordance to Section 5.7.1.2 of the Specific Plan. The wall may be reduced to seven (7) feet in height if a supplemental noise study demonstrates that noise levels on Sylvan Avenue are such that noise mitigation to an interior level of 45dB can be achieved with a 7-foot high wall.

The wall shall have a two-foot horizontal offset in the wall every 100 feet or two lots.
 - b. Walls and fences along the collector streets shall be as required by Section 5.7.1.3 of the Specific Plan.
11. Prior to the issuance of a Grading, Demolition, or Building Permit, Developer shall prepare and submit a Water Pollution Control Plan (WPCP) or Local Stormwater Pollution Prevention Plan (SWPPP) to Land Development Engineering, Stormwater for review. The WPCP or Local SWPPP shall include a description of all erosion, sediment, and pollution control Best Management Practices (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.
12. The proposed project disturbs one (1) or more acres of soil, and is therefore required to obtain coverage under the General Permit for Discharges of Stormwater associated with Construction Activity in accordance with Construction General Permit.
13. The proposed project includes residential development of greater than 10 units, and is therefore considered a Priority Project.
14. 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.
15. 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.
16. 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.

17. Prior to Certificate of Occupancy of each residence, the developer shall install a minimum of one (1) street tree at every single-family residential lot front yard and located within seven (7) feet of the sidewalk, and additional street trees planted spaced thirty-five (35) feet on center for corner lots with side yards.
18. Developer 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 current State of California water use ordinance requirements, Modesto Municipal Code (MMC) requirements, and City of Modesto standards. Right-of-way (ROW), typical home front yards, and common area landscaping shall be submitted for review and approval.
19. Applicant shall provide L&I construction documents for the Common Lots to be reviewed by the Parks Planning and Development Division and follow City of Modesto's Park Standards.
20. 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.
21. 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.
22. 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.
23. All department 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.
24. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
25. 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 mitigation measures from the Tivoli Final EIR and Modesto Urban Area General Plan Master EIR that are applicable to the project:

26. Air Quality (Tivoli FEIR Mitigation Measure E.1): The construction plans for each group of building permits shall incorporate the following recommendations from the District to minimize emissions during construction phases:
- a. The project developers shall review Regulation VIII of the San Joaquin Valley Air Pollution Control District 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. Compliance plan shall be submitted to and approved by the Community and Economic Development Department prior to the issuance of a grading or building permit, whichever occurs first.
 - b. 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. It is anticipated that in the near future both NO_x and PM₁₀ control equipment will be available. The San Joaquin Valley Air Pollution Control District should be consulted during this process. The Project Developers shall incorporate available new technology in construction contracts.
 - c. The project developers shall limit traffic speed on unpaved roads to 15 miles per hour.
 - d. The project developers shall install sandbags or other control measures to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.
 - e. 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.
 - f. The project developers shall install windbreaks at windward sides of construction areas, if necessary to prevent wind-blown dust. Windbreaks shall be installed by the Project Developers prior to the issuance of grading or building permit, whichever occurs first.
 - g. The project developers shall suspend excavation and grading activity when winds exceed 20 miles per hour.
 - h. Wind speed measuring devices shall be installed by the Project Developers prior to the issuance of grading or building permit, whichever occurs first.
 - i. The project developers shall limit the area subject to excavation, grading, and other construction activity at any one time.

- j. The project developers shall ensure that the accumulation of mud or dirt is expeditiously removed from adjacent public streets 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). Project Developer shall provide a daily street sweeping schedule prior to the issuance of grading or building permit, whichever occurs first.
- k. The project developers shall use alternative-fuel construction equipment, where feasible. Project Developer shall provide a list of any alternative equipment prior to the issuance of grading or building permit, whichever occurs first.
- l. The project developers shall minimize idling time (e.g., to a 10-minute maximum).
- m. 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.
- n. The project developers shall replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set), where feasible.
- o. 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 San Joaquin Valley Air Pollution Control District.
- p. The project developers shall implement activity management to reduce cumulative short-term impacts. Activity management plan shall be submitted to and approved prior to the issuance of a grading or building permit, whichever occurs first.

27. Air Quality (Tivoli FEIR Mitigation Measure E.2c): The site design shall fulfill the following requirements to reduce emissions from energy consumption:

- a. The project developers shall incorporate energy efficient building design features including automated control systems for heating and air conditioning and overall energy efficiency at least 10 percent beyond the requirements of the California Energy Code (Title 24, California Code of Regulations), using features such as increased wall and ceiling insulation beyond Energy Code requirements, light colored roof materials to reflect heat, and energy efficient lighting and lighting controls. Prior to building permit issuance of each project, construction plans shall show that all energy efficient measures are included.
- b. The project developers shall design buildings with windows and/or skylights oriented to maximize natural cooling and heating in

accordance with the California Energy Commission's 2005 Building Energy Efficiency Standards.

- c. The project developers shall incorporate approved deciduous trees to provide shade on the south and west-facing sides of buildings. Prior to building permit issuance of each project, landscape plans shall be approved.
28. Noise (Tivoli FEIR Mitigation Measure F.2a): Design and implement new barriers for noise control at exterior locations of proposed residential development adjacent to major roadways. Prior to building permit issuance of each project, construction plans shall show all noise control features are included. The noise control features shall be installed prior to certificate of occupancy.
29. Biological Resources (Tivoli FEIR Mitigation Measure H.4): In order to assure that nesting Swainson's Hawks will not be disturbed by construction, a qualified ornithologist shall conduct pre-construction surveys of the project site and adjacent areas within 0.5 miles of the project site. Survey Period I occurs from January 1 to March 20, Period II from March 21 to April 5, Period III from April 6 to April 20, Period IV from April 21 to June 10 (surveys not recommended during this period because identification is difficult, as the adults tend to remain within the nest for longer periods of time), and Period V from June 11 to July 30. No fewer than three surveys shall be completed, in at least each of the two survey periods immediately prior to project initiation. If a nest site is found, consultation with CDFW shall be required to ensure project initiation will not result in nest disturbance.
30. Biological Resources (Tivoli FEIR Mitigation Measure H.5): Compensation for loss of foraging habitat. The entire Tivoli project could result in the loss of up to 297.5 acres of foraging habitat for Swainson's Hawks. The Project Biologist will determine the actual acreage of suitable foraging habitat related to the development of the Snow property, and that loss shall be mitigated by providing offsite Habitat Management (HM) lands as described in the CDFG's Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California because the site was confirmed to be foraging habitat for Swainson's Hawks through direct observation and is likely within ten miles of an active nest (used during one or more of the last five years).

The acreage of off-site management lands to be provided will depend on the distance between the project site and the nearest active nest site. The 1994 CDFG staff report states:

- a. Projects within one mile of an active nest tree shall provide:
 - i. One acre of HM land (at least 10% of the HM land requirements shall be met by fee title acquisition or a conservation easement allowing for the active management of the habitat, with the remaining 90% of the HM lands protected by a conservation easement [acceptable to the Department] on agricultural lands or other suitable habitats that provide foraging habitat for

Swainson's Hawk) for each acre of development authorized (1:1 ratio); or

One-half acre of HM land (all of the HM land requirements shall be met by fee title acquisition or a conservation easement [acceptable to the Department] which allows for the active management of the habitat for prey production on the HM lands) for each acre of development authorized (0.5:1 ratio).

- b. Projects within 5 miles of an active nest tree but greater than 1 mile from the nest tree shall provide 0.75 acres of HM land for each acre of urban development authorized (0.75:1 ratio). All HM lands protected under this requirement may be protected through fee title acquisition or conservation easement (acceptable to the department) on agricultural lands or other suitable habitats that provide foraging habitat for Swainson's Hawks.
- c. Projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree shall provide 0.5 acres of HM land for each acre of urban development authorized (0.5:1 ratio). All HM lands protected under this requirement may be protected through fee title acquisition or conservation easement (acceptable to the Department) on agricultural lands or other suitable habitats that provide foraging habitat for Swainson's Hawks.
- d. Management Authorization holders/project sponsors shall provide for the long-term management of the HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands) at the rate of \$400 per HM acre. Current records within the California Natural Diversity Data Base (CNDDDB) are more than five years old, so they alone cannot be used to confirm a mitigation ratio for the loss of approximately 38 acres of foraging habitat related to the Snow Properties Tivoli project. The CNDDDB records do, however, provide guidance. The mitigation ratio depends on whether the project site is within one of three zones: 1) less than a mile; 2) between one and five miles; or 3) between five and ten miles. Nests have been recorded within the riparian habitats along both the Stanislaus River and Tuolumne River within ten miles of the project site. Even though the existing records along these rivers are more than five years old, active unpublished nests along these rivers within the last five years are nearly certain to have occurred. Therefore, this analysis assumes that active Swainson's Hawks nests are present within ten miles of the project site.
- e. Nest season surveys for Swainson's Hawks should be conducted to confirm whether an active nest occurs within one of the closer zones. Assuming that nests are present within ten miles, however, reduces the area requiring nest-season surveys from 314.2 square miles to 78.5 square miles; the area within 5 miles of the project site.

31. Biological Resources (Tivoli FEIR Mitigation Measure H.6a): Implementation of formal CDFW 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 CDFW 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 CDFW 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 CDFW 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 CDFW 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 CDFW'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 CDFW will be notified immediately.

32. Biological Resources (Tivoli FEIR Mitigation Measure H.6b): Compensation for loss of Burrowing Owl habitat. 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 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 with the CDFW, the project applicant should secure the performance of its mitigation duties by providing the CDFW with security in the form of funds that would:

- a. Allow for the acquisition and/or preservation of 6.5 acres (2.6 ha) of HM lands;
- b. 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 CDFW;

- c. Establish an endowment for the long-term management of the HM lands; and
 - d. Reimburse the CDFW for reasonable expenses incurred as a result of the approval and implementation of this agreement.
- 33. Pending CDFW approval, HM lands providing foraging habitat for Swainson's Hawks (see "Loss of Swainson's Hawk Foraging Habitat" below) may also be used to mitigate impacts to Burrowing Owls provided the HM lands provide existing Burrowing Owl foraging and breeding habitat.
- 34. Hazards (Tivoli FEIR Mitigation Measure G.2): Conduct Phase I Environmental Site Assessments prior to issuance of grading or building permit, whichever occurs first. Remediation shall be implemented prior to issuance of grading or building permit or as determined by the Phase I ESA.
- 35. Archeological and Cultural Resources (General Plan MEIR Mitigation Measure AH-21): Any project that involves earth-disturbing activities within previously undisturbed soils in an area determined to be archaeologically or culturally sensitive by the City of Modesto through consultation with Native American tribes or bands and a qualified archaeologist should be required to carry out the following mitigation measures, at a minimum:
 - a. If prehistoric archaeological remains are discovered during project construction (inadvertent discoveries), all work in the area of the find shall cease, and a qualified archaeologist should be retained by the project sponsor to investigate the find, and make recommendations as to treatment and mitigation. In the event of the discovery of a burial, human bone, or suspected human bone all excavation or grading in the vicinity of the find should halt immediately and the area of the find should be protected and the project applicant immediately should notify the County Coroner of the find and comply with the provisions of California Health and Safety Code Section 7050.5, including California Public Resources Code Section 5097.98, if applicable. If human remains are identified, the project sponsor should also retain a Native American monitor;
 - b. A qualified archaeological monitor should be present and should have the authority to stop and redirect grading activities, in consultation with the Native Americans and their designated monitors, to evaluate the significance of any Native American archaeological resources discovered on the property;
 - c. Native American monitors from the appropriate Native American Tribes, as determined by the NAHC should be allowed to monitor all groundbreaking activities, including all archaeological testing and data recovery excavations that are likely to affect Native American resources, as determined by a qualified archaeologist. The project proponent should be responsible for compensating Native American monitors. If human remains are discovered, the NAHC should assign a Most Likely Descendent (MLD);

- d. The landowner agrees to relinquish ownership of all Native American human remains and associated burial artifacts that are found within the project area, to the appropriate Native American MLD, as assigned by the NAHC, for proper treatment and disposition. The MLD will decide whether or not standard archaeological analysis will be allowed on human remains and associated artifacts from burials; and,
- e. If paleontological resources are discovered during earth-moving activities, the construction crew shall immediately cease work in the vicinity of the find, and the City's Planning Manager shall be notified. A qualified paleontologist shall evaluate the resource and prepare a proposed mitigation plan in accordance with Society of Vertebrate Paleontology guidelines. The proposed mitigation plan may include a field survey of additional construction areas, sampling and data recovery procedures, museum storage coordination for any specimen recovered, and a report of findings. Recommendations determined by the lead agency to be necessary and feasible shall be implemented before construction activities can resume at the site where the paleontological resources were discovered. (Policy VII.F.3[c])

36. Noise (General Plan MEIR Mitigation Measure Noise-4): Implement noise-reducing construction practices as conditions of approval where substantial construction-related noise impacts would be likely to occur, such as with extended periods of pile driving, or where construction is expected to continue or where sensitive receptors would be affected by construction noise. Conditions of approval may include, but are not limited to:
- Require construction equipment, including air compressors and pneumatic equipment to have properly maintained mufflers;
 - Require impact tools to be equipped with shrouds or shields;
 - Require that the quietest equipment available be used; and,
 - Require selection of haul routes that affect the fewest number of people. (Policy VII-G.3.b)

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 March 21, 2022, 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 March 21, 2022, by Commissioner Shanks, who moved its adoption, which motion was seconded by Commissioner Morad, and carried by the following vote:

Ayes:	Morad, Pollard, Shanks, Silva, Vohra
Noes:	None
Absent:	Birring, Vazquez
Recused:	None

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

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