

PLANNING COMMISSION
RESOLUTION NO. 2022-28

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

WHEREAS, by Resolution No. 2022-xx on October 3, 2022 the Planning Commission approved Area Plan No. 7 to allow development in this area of the Tivoli Specific Plan, in accordance with the requirements of the Tivoli Specific Plan (Project No. AREA-22-001); and

WHEREAS, the Arcadia Development Company has filed an application for a Vesting Tentative Subdivision Map, Arcadia Property (Tivoli), to divide 29.3 acres generally located north of the existing City of Modesto water well and storage site and southeast of future Aria Way into 141 single-family residential lots and seven landscape and PUE lots; and

WHEREAS, said Vesting Tentative Map was received in the office of the Secretary of the Planning Commission on April 5, 2022, and was accepted for filing and deemed complete on May 4, 2022, in accordance with the provisions of Section 4-4.401 of the Modesto Municipal Code; and

WHEREAS, said application was made concurrently with a proposed amendment to the General Plan Land Use Diagram to amend the land use designation of 25 acres located north of Mable Avenue, east of Oakdale Road from Regional Commercial (RC) to Residential (R) (Project No. GPA-22-002), and a proposed amendment to the Tivoli Specific Plan to change the land use designation of 25 acres located north of Mable Avenue, east of Oakdale Road from Regional Serving Commercial (RSC) to the new designation of Low Density Residential 13 (LDR 13) and to change the land use designation of 29.3 acres generally located north of the existing City of Modesto water well and storage site and southeast of future Aria Way from Medium Density Residential 2 and Medium Density Residential 3 to the new designation of Low Density Residential 15 (Project No. SPA-22-001); 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, 2.0 miles distant; and

WHEREAS, a public hearing was held by the Planning Commission on October 3, 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 has considered an Initial Study, Environmental Assessment No. EA/C&ED 2022-20, which analyzed the potential environmental effects of the proposed project and determined that, on the basis of the

whole record before it, there is no substantial evidence that the amendment will have a significant effect on the environment, and that a Negative Declaration be adopted.

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. A Negative Initial Study/Negative Declaration was prepared by the City of Modesto that analyzed whether the subsequent project may cause any significant effect on the environment that was not examined in the Tivoli Specific Plan Final EIR and whether the subsequent project was described in the Final EIR as being within the scope of the report.
4. 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.
5. 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.
6. There are no substantial changes proposed in the project, which will require major revisions of the Tivoli Specific Plan Final EIR.
7. 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.
8. 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.
9. 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.
10. All feasible mitigation measures set forth in the Final EIR which are appropriate to the project shall be incorporated in the project.

11. The Initial Study/Negative Declaration, Environmental Assessment No. EA/C&ED 2022-20 provides the substantial evidence to support findings 5-10, noted above.

BE IT FURTHER RESOLVED by the Planning Commission that the Vesting Tentative Map of Arcadia Property (Tivoli) accepted for filing in the office of the Secretary of the Planning Commission on May 4, 2022 and revised on September 1, 2022 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. The Arcadia Property (Tivoli) Final Map cannot be recorded unless and until the City Council approves the proposed amendment to the General Plan Land Use Diagram (Project No. GPA-22-001) and proposed amendment to the Tivoli Specific Plan (Project No. SPA-22-001) to allow for development of the 141-lot single-family residential subdivision as proposed. Said approval shall be noted on the Final Map.
2. Prior to recordation of a Final Map, new street names for Streets A, B, C, D, E and I, and Courts C, D, F, G and H of the subdivision shall be proposed and approved by both the City and the County.
3. 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:

- a) Dedication of Aria Way to full width with on-street parking on both sides, from the southwest corner of the tentative subdivision to the northeast corner of the tentative subdivision, including right-of-way of the intersection of Street "I" and Aria Way.
 - b) Transition of the Aria right-of-way from the northwest corner of the previously approved Snow Properties tentative map.
 - c) Dedication of right-of-way for the roundabout at the corner of Bridgewood Way and Aria Way.
 - d) Dedication of Street "I" to a part width standard of at least 34-feet total in pavement width with on-street parking along the west side of the street.
4. The improvement plans shall include but not be limited to the following utility infrastructure improvements as follows:

Storm Drain:

- a) Developers within the Tivoli Specific Plan are required to install storm drainage facilities as outlined in or amended to the Tivoli FMP as approved by the City Engineer. This master plan consists of a centralized storm basin to be located just north of the proposed project within a future dual use public park/basin facility. 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.

- b) The storm drainage basin function has been redefined from the original Tivoli SP and FMP from a detention basin to a retention basin where storm water runoff will be collected, stored and retained within the Tivoli SP. 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, and the project will be required to adhere to City Stormwater Standards as well as the Guidance Manual for Development Stormwater Quality Measures.

Water:

- c) The project is proposing an 8-inch main and a 12-inch main along Mc Reynolds extension and 16-in main along Aria Way to McReynolds. Final sizing of preliminary proposed mains may change depending on overall Tivoli SP requirements and these will be determined before utility design and plan check review process in order to effectively coordinate construction of CIP's. Offsite piping infrastructure may also be necessary to serve the proposed development's needs as part of the overall buildout of the Tivoli SP, in reference to the Tivoli Facilities Master Plan (FMP), and depending on phases of other developments within the Tivoli SP.

Sewer:

- d) The existing sewer system consists of a 24-inch pipe at the intersection of Sylvan Avenue and future Aria Way extension north. This pipe is in planning stages to be extended north by the City or other development projects, and upon completion will be available for this project to connect south of proposed Street A. However, if the developer installs the sewer line in Aria Way first, reimbursement for the installation will be available through the Utilities Sewer Fund.
- e) The project is proposing to install 8-inch mains. Some pipe alignments may be required to be larger if deemed necessary to serve future undeveloped areas of the Tivoli Specific Plan, in reference to the Tivoli Facilities Master Plan (FMP). These will need to be determined before utility design and plan check review process, in order to effectively coordinate construction of CIPs.
- f) 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/Street I.

Storm Water:

- g) The proposed project includes significant redevelopment (greater than 5,000 square feet on a previously developed site), and is therefore considered a Priority Project.
 - h) 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.
 - i) 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.
- 5. Developer shall install screen landscaping in the landscaped buffer area between Lots No. 1 through 11 on the water tank site to the south, including all irrigation systems in accordance to City Standards, to the satisfaction of the Parks Planning Department and the Director of Community and Economic Development or designee.
 - 6. 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.
 - 7. Developer shall install fire hydrants at 300-foot intervals along all streets in this subdivision.
 - 8. Developer shall install arterial and collector street trees, and landscaping in accordance to Sections 3.4.9 through 3.4.12.4 and Exhibit 3.19 of the Specific Plan.
 - 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 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 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, and Aria Way/Sylvan Avenue;
- 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.

11. Projects within the Tivoli Specific Plan are subject to the following fees:

- a) Specific Plan Reimbursement fee of \$7,424.21 per net acre to be paid at the time of building permit issuance;
- b) The Voluntary Land Dedication Program (VLDP) is a mechanism used to calculate the total land that each landowner in the Tivoli Specific Plan area is required to provide the fair share of “volunteered” contribution for the required infrastructure right-of-way for the project. The VDLP analyzes the gross developable acreage and the amount of Public Land needed to develop the Tivoli Specific Plan, to create a fair share contribution percentage and provide a mechanism for equalizing the dedication responsibilities across the project. APN 083-004-076 has a \$526,914 in fee credits. APN 083-004-083 will pay \$192,851 into the VLDP at the time of final map recordation.

12. 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.

13. 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.

14. Applicant shall submit Landscape and Irrigation (L &I) plans for review and approval by the City’s Parks Planning and Development (PPD) Division. L&I plans shall meet current State of California water use ordinance requirements, Modesto Municipal Code (MMC) requirements, and City of Modesto standards as outlined in the Tivoli Specific Plan at time of submittal.

Right-of-way (ROW), typical home front yards, and common area landscaping shall be submitted for review and approval.

15. Applicant shall provide street trees thirty-five feet (35') on center and located within seven (7') feet of the sidewalk along the frontage of Common Lots, Street A, "Street I" and Aria Way.
16. There shall be a minimum of one (1) street tree at every Single-Family Lot front yard and located within seven (7') feet of the sidewalk; additional street trees shall be spaced thirty-five feet (35') on center for corner lots with side yards.
17. Applicant shall provide L&I construction documents for the Landscape Lots to be reviewed by the Parks Planning and Development Division and follow City of Modesto's Park Standards.
18. 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 drainage basins shall be appropriately landscaped and irrigated to address the specific type of storm water control measure.
19. Applicant shall install a separate landscape water meter for public ROW Common Lot landscape and irrigation systems.
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:

- 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.
- 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.
- The project developers shall limit traffic speed on unpaved roads to 15 miles per hour.
- 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.
- 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.
- 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.
- The project developers shall suspend excavation and grading activity when winds exceed 20 miles per hour.

- Wind speed measuring devices shall be installed by the Project Developers prior to the issuance of grading or building permit, whichever occurs first.
- The project developers shall limit the area subject to excavation, grading, and other construction activity at any one time.
- 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.
- 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.
- The project developers shall minimize idling time (e.g., to a 10-minute maximum).
- 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.
- The project developers shall replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set), where feasible.
- 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.
- 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:

- 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.

- 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.
- 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.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 Arcadia 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 Swainson) 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:

- 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).

- 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.
 - 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.
 - 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 Arcadia 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.
 - 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.
30. 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:

- 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.
- 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.
- 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.
- If accidental take (disturbance, injury, or death of owls) occurs, the CDFW will be notified immediately.

31. 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:

- Allow for the acquisition and/or preservation of 6.5 acres (2.6 ha) of HM lands;
- 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;
- Establish an endowment for the long-term management of the HM lands; and
- Reimburse the CDFW for reasonable expenses incurred as a result of the approval and implementation of this agreement.

32. 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.
33. 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.
34. Hydrology and Water Quality (Tivoli FEIR Mitigation Measure I.1): The project proponent shall prepare a 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 one acre). The SWPPP shall emphasize measures designed to minimize erosion and off-site sedimentation. It is not required that the SWPPP be submitted to the RWQCB, but must be maintained on-site and made available to RWQCB staff upon request. The SWPPP shall include:
- Specific and detailed BMPs designed to mitigate construction-related pollutants. At minimum, BMPs shall include practices to minimize the contact of construction materials, equipment, and maintenance supplies (e.g., fuels, lubricants, paints, solvents, adhesives) with storm water. The SWPPP shall specify properly designed, centralized storage areas that keep these materials out of the rain.
 - An important component of the storm water quality protection effort is knowledge of the site supervisors and workers. To educate on-site personnel and maintain awareness of the importance of storm water quality protection, site supervisors shall conduct regular tailgate meetings to discuss pollution prevention. The frequency of the meetings and required personnel attendance list shall be specified in the SWPPP.
 - The City staff shall review and approve project SWPPP prior to developer obtaining a Grading and Building Permit. 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).
 - BMPs designed to reduce erosion of exposed soil may include, but are not limited to, soil stabilization controls, watering for dust control, perimeter silt fences, placement of hay bales, and sediment basins. The potential for erosion is generally increased if grading is performed during the rainy season as disturbed soil can be exposed to rainfall and storm runoff. If grading must be conducted during the rainy season, the primary BMPs selected shall focus on erosion control; that is, keeping sediment on the site. End-of-pipe sediment control measures (e.g., basins and traps) shall be used only as secondary

measures. Entry and egress from the excavation area shall be carefully controlled to minimize off-site tracking of sediment. Vehicle and equipment wash-down facilities shall be designed to be accessible and functional during both dry and wet conditions.

35. Hydrology and Water Quality (Tivoli FEIR Mitigation Measure 1.2): The City shall ensure that development under the proposed project meets all the requirements of the current Municipal NPDES Permit (NPDES Permit No. R5-2002-0132 as amended by Order No. R5-2003-0182) for operation-phase water quality treatment. The drainage plan for each proposed development under the Specific Plan shall include features and operational BMPs to reduce potential impacts to surface water quality associated with operation of the project. The final design shall include measures designed to mitigate potential water quality degradation of runoff from all portions of the completed development. In general, "passive," low-maintenance BMPs (e.g., grassy swales, porous pavements) are preferred over active filtering or treatment systems. An operations and maintenance plan shall be developed and implemented to inspect and maintain BMPs in perpetuity.

The final design team for the development project shall review and incorporate as many concepts as practicable from the City's Guidance Manual for New Development Stormwater Quality Control Measures, Start at the Source, Design Guidance Manual for Stormwater Quality Protection and the California Stormwater Quality Association's Stormwater Best Management Practice Handbook, Development and Redevelopment. BMPs to be implemented by the developers within the plan area may include, but are not limited to, the BMPs described below for the construction and operation phases of the projects:

During the Construction Phase:

- Erosion control BMPs may include preservation of existing vegetation, use of hydraulic mulch, hydroseeding, soil binders, earth dikes and drainage swales, velocity dissipation devices and implementation of channel bank stabilization techniques;
- Temporary sediment control BMPs may include use of silt fences, sediment traps, sediment basins, check dams, fiber rolls, and drainage inlet protection;

During the Operation Phase

- Permanent operation-phase BMPs may include: minimization of directly connected impervious surfaces, use of permeable pavements or unit pavers, grassy bioswales, stormwater planters, covering of refuse handling areas, stenciling drainage inlets, wet ponds, and detention basins.

At a minimum, runoff from all components of the project shall receive some level of treatment prior to discharging to the detention basins. Runoff would then be detained in the basins prior to being pumped into the Modesto Irrigation District's canal.

36. Hydrology and Water Quality (Tivoli FEIR Mitigation Measure I.3b): As a condition of approval of the final grading and drainage plans for all projects proposed within the plan area it must be demonstrated through detailed hydraulic analysis that implementation of the proposed drainage plans will:
- Include adequately sized detention facilities to accommodate anticipated runoff associated with the 100-year storm event. A licensed professional engineer shall prepare the final drainage plan for the project and plans must be submitted to the City of Modesto Public Works for review and approval.
 - Include drainage components that are designed in compliance with City of Modesto standards. The grading and drainage plans shall be reviewed for compliance with these requirements by the Department of Public Works; and
 - Establish a funding mechanism for maintenance and annual inspections of the detention basin, drainage ditches, and drainage inlets. Any accumulation of sediment or other debris shall be promptly removed. An annual report documenting the inspection and any remedial action conducted shall be submitted to the City of Modesto Public Works Department for review.
37. Developer shall comply with Tivoli FEIR Mitigation Measure I.4, Hydrology and Water Quality, to the satisfaction of the City Engineer or designee.
38. Archeological and Cultural Resources (General Plan MEIR Mitigation Measure AH-21): 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])
39. 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 October 3, 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 October 3, 2022, by Commissioner Shanks, who moved its adoption, which motion was seconded by Commissioner Morad, and carried by the following vote:

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

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

Original, signed copy on file in CEDD

Paul Liu, Acting Secretary