# CHAPTER 9

## IMPLEMENTATION

Previous chapters focused on the analysis and issues of providing public infrastructure, facilities, and services needed to serve the TSP. The purpose of this chapter is to provide for the implementation of the TSP that addresses the provision of public infrastructure, facilities, and services as well as the development process and plan administration. Various implementation policies and procedures are established for the area of Public Infrastructure, Public Facilities and Service, Plan Administration Development Process, and Environmental Review.

## 9.1 Public Infrastructure

The implementation of the TSP must insure that public infrastructure is constructed in a timely and logical manner. Public infrastructure must be provided prior to or concurrent with development. Section 3.3 Public Facilities Infrastructure Concept Plan describes the conceptual infrastructure plan for the TSP. Prior to Project development, a Facilities Master Plan (FMP), and Infrastructure Financing Plan (IFP) providing details of the required major public infrastructure will be adopted.

### 9.1.1 Overall Public Infrastructure

The provision of public infrastructure includes the necessary on-site and off-site facilities. Right-of-ways and easements needed for the infrastructure shall be provided to the public consistent with city standards and policies. The major or "backbone" infrastructure is defined as infrastructure that benefit the broader specific plan area and is further defined Section 9.1.2 below. The "backbone" infrastructure is financed generally by a combination of fees, project-wide financing program, and developer funding. The "project specific" infrastructure is defined as infrastructure that primarily benefit the project site such as the local streets including the required utility lines. The "project specific" infrastructure is the responsibility of the developer to install. The types of public infrastructure that must be provided with development are generally described as follows:

#### 9.1.1.1 Streets

The street system includes arterial, collector, local, and private streets. The specific improvements include but are not limited to pavement, curb, gutter, sidewalk, separated bike paths, landscaping, traffic control devices, gateways, and other traffic related accessories. The landscaping is included within the street right-of-way, landscape lots, paseos, and gateways.

#### 9.1.1.2 Sewer

The sewer system includes, but is not limited to, sewer plant and on- and off-site improvements to sewer trunk lines, sewer interior lines, lift stations, and other sewer system accessories.

#### 9.1.1.3 Water

The water system includes, but is not limited to, on- and off-site improvements to water transmission lines, interior water mains, other water distribution lines, water supply wells, and other water system accessories.

#### 9.1.1.4 Storm Drainage

The storm drainage system includes, but is not limited to, the central detention basin with dual park use, secondary basin system in the southwest portion of the site, storm lift stations and force mains, gravity collection storm water lines, discharge mains and outfall structures to MID, and other water quality accessories.

#### 9.1.1.5 Neighborhood Park

The public infrastructure includes the development of the neighborhood park that also serves a dual use as the central detention basin. The park improvements include but are not limited to park facilities, landscaping, and other parks accessories.

#### 9.1.1.6 Utilities

Different utility companies provide electricity, gas, telephone, and cable services. These utilities are generally provided within the street right-of-way or next to the street within a public utility easement. Utilities are planned and installed with the construction of the street.

### 9.1.2 Backbone Infrastructure

The "backbone" infrastructure serving the TSP is defined as improvements that benefit the broader specific plan area including but is not limited to the following:

#### Streets

- Perimeter arterial streets including necessary land acquisition, project frontage improvements, traveled lanes and storm drainage facilities on the other side of the road across from the project site, traffic control devices, and other traffic related accessories not covered by CFF. This includes landscaping in the street right-of-way and landscape lot.
- Internal collector streets including paseos and the necessary land acquisition, full width improvements, traffic control devices, and other traffic related accessories. This includes landscaping in the paseo, street right-of-way, and landscape lot.
- Off-site street improvements as determined by the Mitigation Monitoring Program.
- Gateways on public property.

### Sewer

- Sewer system includes but is not limited to sewer trunks and mains in the arterial and collector streets, lift stations, and other necessary accessories. This may include necessary sewer facilities off the Tivoli Specific Plan project site including the Near Term sewer plant expansion and downstream collection system improvements.

### Water

- Water system includes, but is not limited to, water transmission mains, distribution lines in the arterial and collector streets, water supply wells, and other necessary water system accessories. This may include necessary water facilities off of the Tivoli Specific Plan project site.

### Storm Drainage

- Storm drainage system includes but is not limited to the central dual use basin, secondary basin system, gravity storm water lines in the arterial and collector streets, lift stations and force mains, and other necessary water quality accessories. This may include necessary storm drainage facilities off the Tivoli Specific Plan project site including discharge mains and outfall structures to MID facilities.

### Public Parks

- The neighborhood park including landscaping, irrigation, equipment, and land aquisition.
- The project share of the Community Park and facilities.

### Utilities

- Utilities such as gas, electricity, telephone, and cable television that are needed in the collector and arterial streets.

### Other Facilities

- Police and Fire Department facilities.
- Other community buildings and sites, if determined to be necessary.

Development of "backbone" infrastructure in TSP shall comply with the following policies:

1. No entitlements such as, but not limited to, Area Plan, Final Development Plan, and Tentative Map may be approved until the Facilities Master Plan and Infrastructure Financing Plan are adopted by the City Council.
2. Backbone and project specific infrastructure shall be constructed prior to or concurrent with development.
3. Backbone infrastructure phasing shall be established by the approved Facilities Master Plan and Infrastructure Financing Plan.
4. A funding mechanism (such as formation of or annexation to a Community Facilities District or Assessment District) as determined by the Infrastructure Financing Plan to finance the backbone infrastructure and maintenance of appropriate infrastructure shall be in place prior to the recordation of any Final Map, or the issuance of a building permit, whichever occurs first.

## 9.1.3 Facilities Master Plan And Infrastructure Financing Plan

A Facilities Master Plan (FMP) provides a detailed analysis and description of the "backbone" infrastructure required to serve the Specific Plan area. The FMP includes calculations and engineering drawings that provide the sizing and capacity of facilities and the layout in relation to the properties. The "backbone" infrastructure components as broadly described above are street system, sewer, water, storm drainage, public utilities, parks, and paseos. The FMP will specify the "backbone" infrastructure. The FMP is based on the Public Facilities Infrastructure Concept Plan in Chapter 3 of the Tivoli Specific Plan.

The Infrastructure Financing Plan (IFP) identifies costs and provides the funding mechanisms to construct the public "backbone" infrastructure identified in the FMP. The primary funding mechanisms for the "backbone" infrastructure are the creation of a bonded Community Facilities District (CFD) and city fees as described below. The IFP coordinates the developer's

improvement responsibility and city fees when establishing the financing plan for "backbone" infrastructure. Oversized backbone infrastructure provided by the TSP developers would be subject to appropriate reimbursement consistent with City policies.

The FMP and IFP are separate "stand alone" documents from the Specific Plan.

#### 9.1.3.1 Phasing of Backbone Infrastructure

The TSP proposes two phases for development. Phase I includes approximately 364 acres. Phase II is composed of the northeast corner of the plan area, which is approximately 90 acres and is currently held in single ownership. Refer to Exhibit 9.1 Phasing Plan for the areas just described. The FMP and IFP will define the phasing for the "backbone" infrastructure. There may be more than two phases for the provision of the "backbone" infrastructure as determined by the Facilities Master Plan and Infrastructure Financing Plan.

### 9.1.4 Volunteer Land Dedication Program

The Facilities Master Plan and Infrastructure Financing Plan discussed in section 9.1.3 will also quantify the right-of-way or other public lands needed to construct the "backbone" infrastructure. Rising land values have triggered the need to consider and evaluate an alternative method for dedicating and/or purchasing the public land needed to develop the TSP. Since each area in the TSP can not individually or independently construct a self contained infrastructure system, a Volunteer Land Dedication Program, or VLDP, is being considered for the Tivoli area.

The primary purpose of the VLDP is to identify the acreage of public lands required for construction of the "backbone" infrastructure and establish a program to aid in the reduction of public land costs. The VLDP is a mechanism used to calculate the acreage that each landowner who develops property in Tivoli is required to provide to the community as his or her own fair share of "volunteered" contribution for the benefit and privilege of developing their property. The VLDP will analyze gross developable acreage, the amount of public land needed to develop the TSP, create a fair share contribution percentage, and provide a mechanism for equalizing the dedication responsibilities across the project.

Fully developed properties within the TSP, including any fully developed residential areas, will be excluded from any VLDP. Any VLDP will need to be adopted by ordinance, and will be a companion to the FMP and IFP. In the event a VLDP is not adopted, other options of land dedication and/or purchase will need to be dealt with in the FMP and IFP.

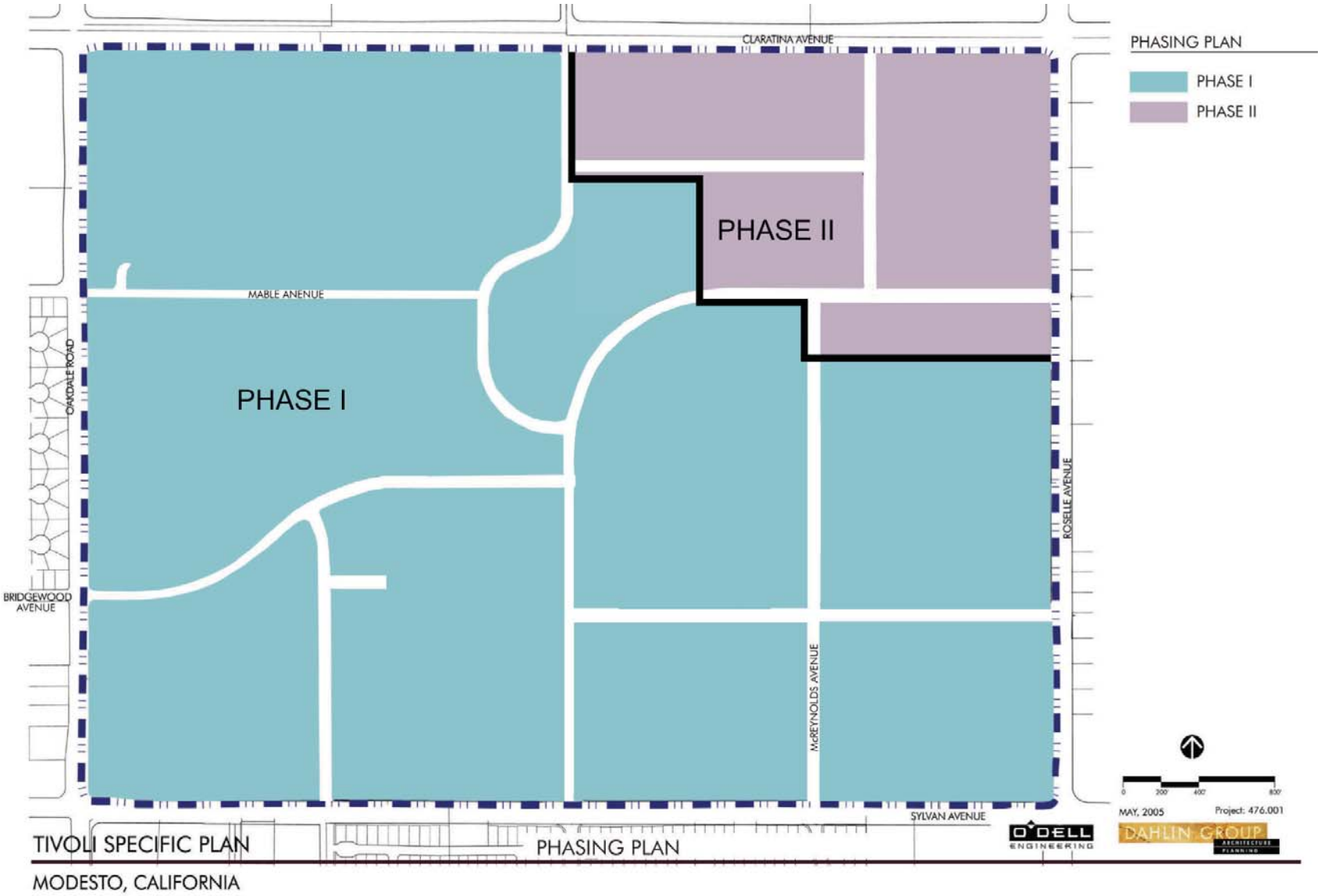
### 9.1.5 Infrastructure Funding Mechanisms

The following are funding mechanisms that are available for the TSP.

#### 9.1.5.1 Community Facilities District for Tivoli

The City intends to create one or more Community Facilities Districts ("CFDs") or similar funding mechanism to fund construction and maintenance of backbone infrastructure, community facilities and possibly community services necessary to serve the Tivoli Specific Plan Area. The purpose of this funding mechanism will be to ensure the City is collecting all funds necessary to construct and maintain the regional, backbone infrastructure and community facilities necessary to serve the Specific Plan Area. This CFD may include police and fire services as well. The FMP/IFP and subsequent documents shall establish the cost allocation and tax or fee structure for all properties within the Specific Plan area. It is the policy of the City Council that no new development may occur without forming or annexing to the applicable CFD(s) or other capital and maintenance funding mechanisms adopted by the City at the applicable rate(s), and by paying all applicable fees and taxes.

Exhibit 9.1 - TSP Phasing Plan



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No area plan, final map, final development plan, building permit or other development entitlement for any property within the Specific Plan area shall be deemed consistent with this Specific Plan until and unless the affected parcel is required to form or annex to the applicable CFD(s) or other funding mechanism at the applicable rate(s) and pay all applicable taxes and fees.

As a condition of approval for development of any parcel within the Specific Plan area, the property owner and/or developer shall be required to take all actions necessary to secure and establish a City Mello-Roos CFD for the Tivoli Specific Plan for capital improvements and ongoing maintenance(the CFD may include police and fire services) as set forth in the adopted FMP/IFP for the Specific Plan area or, if said CFD has been established for the Tivoli Specific Plan, the property owner and/or developer shall take all actions reasonably necessary to annex its property to said CFD, which shall actually result in annexation of its property to said CFD at the tax rate for the zone of said CFD to which the property is ultimately annexed; or, alternatively, in the event a CFD is not formed or complete annexation of the property does not occur for any reason, the property owner and/or developer may provide a funding mechanism for said capital improvements and ongoing maintenance (and possibly police and fire services) to the same general standard as other similar capital improvements, ongoing maintenance and community services financed by said CFD, subject to approval of the funding mechanism by the City, which approval shall not be unreasonably withheld.

Payment of the CFD tax(es) shall be required prior to issuance of a building permit. Each parcel shall also be required to pay all CFF, sewer and water capacity charges and other development fees applicable to the property in accordance with City ordinances, resolutions, regulations, policies and procedures. Undeveloped properties may be required to annex to the CFD in accordance with the FMP/IFP for the Specific Plan Area.

It is essential to provide the necessary backbone infrastructure and community facilities at the earliest possible opportunity in order to ensure orderly development, mitigate potential traffic issues, and maintain appropriate service standards for the Specific Plan area. Debt financing in the CFD for the Specific Plan area is the preferred method for funding the construction of backbone infrastructure and community facilities necessary to serve the Specific Plan area. Debt financing is expected to be essential to guarantee that facilities will be constructed in a timely manner to meet the requirements of the FMP/IFP for the Specific Plan area.

Developers of properties that proceed ahead of the infrastructure sequencing plan contained in the FMP/IFP will be required to install and fund the costs of extending backbone infrastructure to their projects, subject to future reimbursement in accordance with the sequencing and prioritization contained in the FMP/IFP. Some developments may need to construct roads, sanitary sewer, water and storm drainage facilities through areas that remain undeveloped.

The City may defer the requirement to form or annex to a CFD for:

a. Residential properties of less than two acres, until there is a land division, addition of any dwelling unit or change of use, or
b. The existing commercial properties at northeast corner of Oakdale Road and Sylvan Avenue and the southeast corner of Oakdale Road and Mable Avenue, until there is a change of use, physical expansion of the existing building, construction of new buildings, or division of property.

These parcel owners will be subject to charges for CFF, water and sewer capacity charges, and other applicable development fees, and for specific infrastructure items that provide direct benefit to their properties, such as a sanitary sewer or storm drain line. These parcel owners will be required to pay their fair share of the infrastructure costs at the time a development project for the parcel is approved, as established by the FMP/IFP for the Specific Plan area.

#### 9.1.5.2 Capital Facilities Fees

Capital Facilities Fees pay for citywide improvements such as streets (arterials and expressways), police and fire facilities, parks, air quality, general government, and administration.

#### 9.1.5.3 Water Fees

There are three primary water fees that Tivoli developers will have to pay for the project's fair share of water service to the project. Water Capacity Charge pays for pump stations, wells, fire hydrants, and water mains 10 inches or larger. Water Connection for Main Extension Fee pays for new water main to an existing live main for connecting a new subdivision to an existing water main. The Water Service Installation Charge pays for installing the water service from the water main to the property line.

#### 9.1.5.4 Sewer Fees

There are several primary sewer fees that will apply to new development for the project's fair share of sewer service. The Sewer Capacity Charge pays for the Wastewater Treatment Plant and sewer trunk system throughout the city. The Subtrunk Charge pays for the construction and maintenance of subtrunk lines. The Lateral Charge pays for specific sewer laterals that extend from the street or alley to the specific property.

#### Sewer Fees For Near Term Sewer Service

The near term wastewater treatment system improvements needed to serve the TSP include the installation of the Dissolved Air Flotation (DAF) system and the first phase of the tertiary treatment facility. The DAF is needed for existing deficiencies and the first phase of the tertiary treatment facility is needed for new near term development. The DAF may allow capacity for development to proceed in advance of the Phase 1A tertiary completion. These improvements would provide a total capacity of 5.3 million gallons per day to serve the new near term development within the City of Modesto including the development of the TSP.

The City updated the sewer rates and connection fees in the Summer of 2007 and bond for the first phase tertiary treatment facility based on the updated fees. If funding is not available in a timely manner, then the project sponsors would be required to fund and construct the necessary improvements to serve the project and some of the cost may be subject to reimbursement.

#### 9.1.5.5 Developer Installation

Developers are responsible to install the "project specific" infrastructure including street dedication and improvements along the perimeter and within the individual project site. The size, location and design of the "project specific" infrastructure will be determined at the time of Tentative Map, Final Development Plan and/or Administrative Final Development Plan approval.

#### 9.1.5.6 Other Financing Options

The IFP will consider other financing options that may include, but are not limited to: Landscape and Lighting Districts, Assessment Districts, Area of Benefit Districts, and/or other Long-Range Financing Strategies.

### 9.1.6 Public Infrastructure Design Standards

Required TSP public infrastructure and other public facilities that includes streets, sewer, water, storm drainage, schools, parks and community landscape areas shall be in accordance with the City of Modesto Standard Specifications, 2006 Edition, or as amended by the City of Modesto and as amended by the TSP. The standards applicable shall be those in effect at the time of vesting. Landscape Design will be in accordance with Chapter 1 of Title 12 of the Modesto Municipal Code and the TSP. Standards in the TSP prevails where there is a conflict. Prior to development of the Specific Plan area, developer shall install, repair, replace or upgrade all public infrastructure necessary to serve existing development so that it substantially complies with current City standards.

### 9.1.7 Infrastructure Maintenance

#### 9.1.7.1 Public Facilities

Sewer, water, storm drainage, roadway, and park facilities will be owned and maintained by the City of Modesto upon acceptance of improvements. A CFD is authorized to finance the services authorized by California Government Code Section 53313, et seq, as may be amended from time to time. Services may include maintenance of parks, parkways, and open space, and storm drainage and flood control facilities. All applicable properties must participate in the maintenance CFD. The IFP identifies what eligible public facilities will be maintained by the CFD or other funding mechanisms.

The Modesto Irrigation District (MID) currently owns and maintains a number of irrigation facilities which pass through or serve the Tivoli project site. During the development of the TSP, these facilities will be avoided, relocated, or replaced, as determined necessary as part of the individual project review and approval process. Whether the facilities remain in place as they currently exist, or are relocated or replaced, they will continue to be maintained by the MID. Dry utility facilities will be owned and maintained by the respective utility companies.

#### 9.1.7.2 Private Facilities

##### Detached Residential

Maintenance of private common open space, landscape areas, subdivision recreation facilities, internal private roads within the individual residential enclaves, and individual neighborhood entry features, shall be the responsibility of each subdivision, through mechanisms such as a homeowners association for that specific development. Homeowner associations require the preparation of Conditions, Covenants, and Restrictions to be reviewed and approved by the City. Individual property owners will be responsible for the landscaping and maintenance of their own private home lots.

Developers may negotiate with the City of Modesto for the neighborhood common open space to be dedicated to the city and maintained by the CFD. Maintenance of the common open space by the CFD must be consistent with the approved FMP and IFP.

##### Attached Residential

Maintenance of the private roads, sidewalks and community landscaping, building exteriors, recreation facilities and ancillary structures (i.e. parking areas, signage, irrigation, laundry rooms or refuse storage areas) will be the responsibility the management/property owner for that individual complex or homeowners association if the complex has been divided for ownership purposes. Homeowner associations require the preparation of Conditions, Covenants, and Restrictions to be reviewed and approved by the City. Funds needed to cover maintenance expenses will be raised through association fees levied on the homeowners by the developer.

##### Commercial And Office

Maintenance of the private parking lots, sidewalks/pathways, and common landscape areas within the commercial, office, and employment center uses will be the responsibility of the landowner(s).

## 9.2 Other Public Facilities And Services

### 9.2.1 Public Safety Services

Provision of public safety, particularly police and fire services is provided through the City General Fund. The City is currently considering whether public safety services should be financed through a new financing mechanism. If it is determined that a new financing mechanism should be established to fund public safety services, The TSP will be expected to participate in the new financing mechanism. Provision of public safety, particularly police and fire services, may be funded through a CFD, as authorized by the California Government Code Section 53313, et seq, as may be amended from time to time.

### 9.2.2 Public Safety Facilities

Provision of public safety facilities must be addressed by new development. Public Facilities are funded through the CFF program. Other funding mechanisms may also be considered.

## 9.3 Plan Administration

### 9.3.1 Adoption

The principal method by which a city implements land use policy is through its general plan and zoning ordinance. The authority to designate and zone is inherent in the police power delegated to cities by the California Constitution. Pursuant to State Government Code, Section 65453, the TSP and its accompanying Facilities Master Plan and Infrastructure Financing Plan shall be adopted in the same manner as a General Plan. A specific plan may be adopted by either resolution or ordinance. The City's established policy has been to adopt specific plans by ordinance and applicable project related new fees by resolution.

The City's Zoning Map will need to be amended to Specific Plan Overlay with specific land uses established by the adopted Specific Plan.

### 9.3.2 Annexation

After approval of the TSP, the annexation of the unincorporated portions of TSP area into the City will be submitted for consideration by the Local Agency Formation Commission (LAFCO). The applicant will provide all the necessary information as required by the LAFCO application process and provide the materials to the City of Modesto. The City of Modesto will file the application with LAFCO for consideration.

Annexation of the unincorporated portion of the TSP area into the City will ensure that future development is accomplished in conformance with this Specific Plan, the City General Plan, and the standards of the City.

### 9.3.3 Specific Plan Administration Authority

The City of Modesto's Director of Community and Economic Development Director (hereinafter referred to as Director) shall be responsible for administering the provisions of the TSP in accordance with the provisions of this Specific Plan, the State of California Government Code, Subdivision Map Act, and the City of Modesto General Plan, Zoning Ordinance and Municipal Code.

### 9.3.4 Specific Plan Amendment Procedures

Amendments to the TSP will be classified as either minor or major (substantial) in significance. It is recognized that land use modifications may occur.

#### 9.3.4.1 Minor Amendments

Minor amendments include simple modifications to text or graphics that do not substantially change the meaning, intent, or are contrary to any provision of the TSP. For example, a minor amendment could be a minor acreage adjustment between adjacent land use designations that does not increase the maximum number of units. Another example could be a minor alignment adjustment with a Collector street that does not affect the general circulation and land use plan. Minor modifications may be accomplished administratively by the Director or Designee or the Director may refer the purposed modification to the Planning Commission for decision without a public hearing. Any decision by the Director or Designee is appealable to the Planning Commission.

#### 9.3.4.2 Major Amendments

Major (substantial) modifications are amendments to exhibits or text that change the intent, development standards or other significant provisions of the TSP. Major amendments result in an increase in the maximum number of residential units or commercial area, a substantial modification in the amount of park/basin and school site, the general circulation system layout, or development standards and design guidelines and standards, a modification which may cause significant environmental impact, or other issues to be determined by the Director or Designee. Major modifications require a Specific Plan Amendment and shall be approved by the Planning Commission and City Council. Major amendments to the TSP shall adhere to the following format.

- All amendments to the plan will include textual, graphic or other materials suitable to replace or augment the sections being modified in the amendment. The applicant must provide amendments to the text using a strike-out and underline format and amendments to graphics using clouds and delta format. The graphic format and style of the original specific plan will be followed for ease of incorporation and consistency.
- All amendments will be analyzed by the City to ensure that the TSP remains consistent with the comprehensive planning district (CPD) it is situated in (Roselle-Claribel CPD), adjacent and adopted specific plans and the overall General Plan of the City.
- Amendments to the TSP may be subject to environmental analysis. This will include an analysis of consistency with the EIR prepared for the TSP, in addition to other potential environmental impacts associated with the amendment itself.
- City staff will prepare and submit a staff report to the Planning Commission and City Council summarizing the proposed changes to the TSP. This staff report must include statements regarding General Plan consistency and the need for additional environmental documentation, if required; and
- Consistent with the provisions of Government Code Section 65453, both the City Council and the Planning Commission will hold public hearings on any proposed amendment to the TSP.

#### 9.3.4.3 Criteria for Specific Plan Amendments

Proposals to amend the Specific Plan must be accompanied by an analysis of the Amendment's effects, compared to the adopted Specific Plan on the following issues:

1. Conformance with the General Plan including the Housing Element
2. Conformance with the Specific Plan policies and standards.
3. Compatibility with surrounding and existing planned uses.
4. Visual impacts, on-site and off-site.
5. Traffic impacts.
6. Public infrastructure consistent with the adopted Facilities Master Plan and Infrastructure Financing Plan.

### 9.3.5 Interpretations

When there is a question or ambiguity regarding the interpretation of any provision of the TSP, the Director or Designee has the authority to interpret the intent of such provision. The Director or Designee may, at their discretion, refer interpretations to the Planning Commission for their consideration and action. Such a referral shall be accompanied by a written staff analysis of issues related to the interpretation.

All interpretations made by the Director or Designee may be appealed to the Planning Commission.

### 9.3.6 Specific Plan Reimbursement Fees

In accordance with Government Code 65456, and the City of Modesto's Municipal Code Section 10-4.101,et.seq., the City may impose a fee for the purpose of recovering the costs associated with the preparation, adoption and any associated revisions or major amendments to the TSP, including CEQA review.

The basis for the fee shall be those direct costs incurred by the applicants and approved as reimbursable expenses by the City. Upon approval of the costs, the City may enter into a reimbursement agreement with the sponsoring property owners through which the City will forward Specific Plan fees collected or will otherwise grant credits.

### 9.3.7 Severability

If any regulation, condition, or program or portion thereof of the TSP is for any reason held invalid or unconstitutional, by any court or competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and the invalidity for such a provision shall not affect the validity of the remaining provisions.

### 9.3.8 Indemnity

The TSP applicant shall indemnify, defend and hold harmless the City of Modesto, its agents, officers and employees from any and all claims, actions or proceedings against the City of Modesto, its agents, officers and employees to attack, set aside, void, or annul any approval by the City of Modesto and its advisory agency, appeal board or a legislative body concerning the TSP and its related documents (e.g . Environmental Impact Report, Facilities Master Plan or Finance Plan)

## 9.4 Development Process

### 9.4.1 Area Plan

An Area Plan approval is required to insure that the circulation, infrastructure, land use, density, project design and other specific plan provisions are provided for the entire Area Plan boundary consistent with the policies of the Specific Plan. Residential blocks and lots must be provided to confirm the residential design and density and a variety of housing types. An Area Plan must address the transition and integration with neighboring areas. An Area Plan is intended to prevent properties from being developed on a "piecemeal" basis and in an uncoordinated and disjointed manner. Exhibit 9.2 shows potential Area Plan boundaries established for the Tivoli Specific Plan.

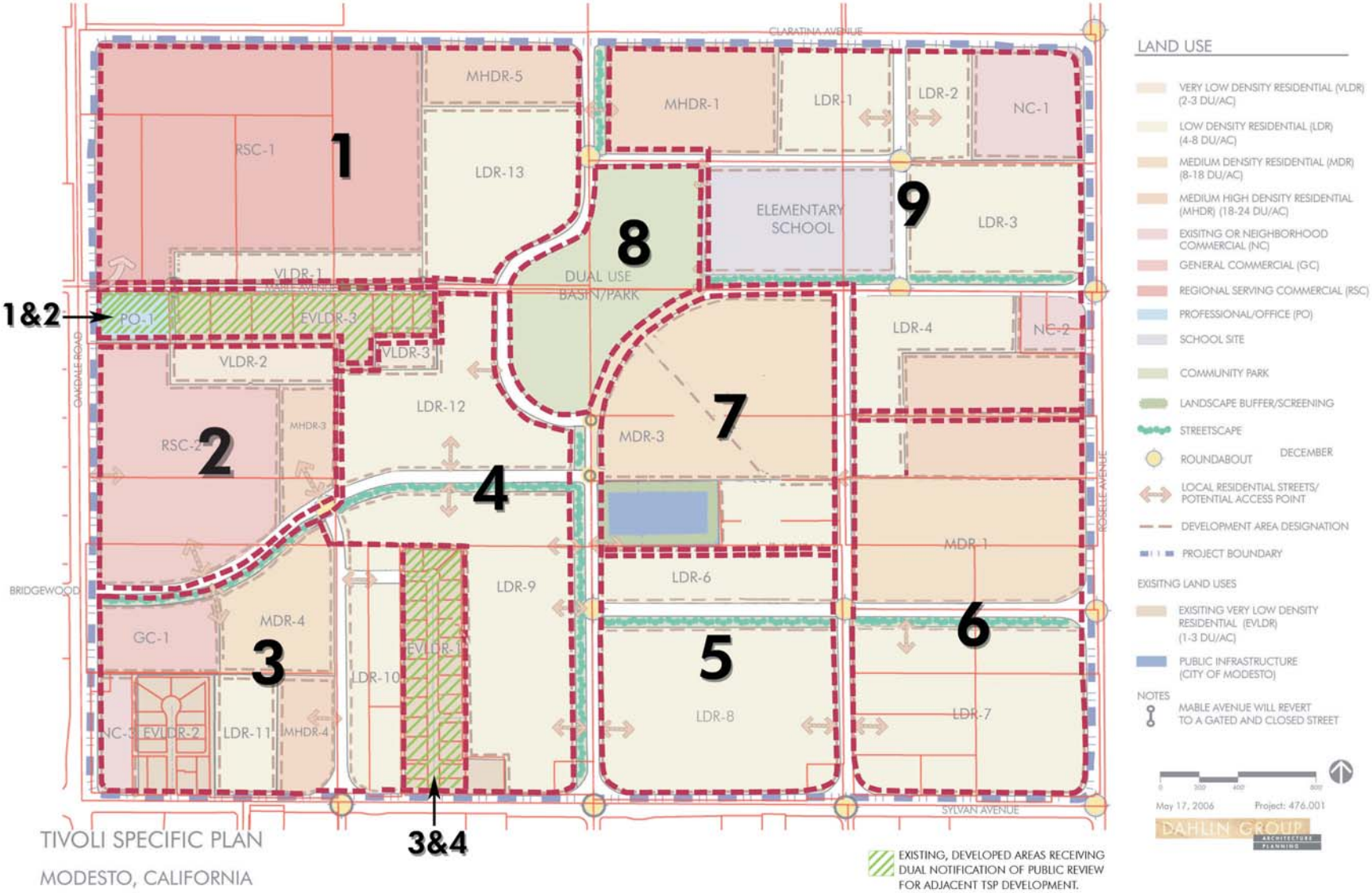
An Area Plan boundary is based on a variety of parameters including primarily property lines, but also perimeter arterial and collector streets; provision of public infrastructure consistent with the TSP, Facilities Master Plan and Infrastructure Financing Plan. The Community and Economic Development Director or designee may approve changes to the boundaries based on these parameters being consistent with the policies of the TSP.

The Planning Commission reviews and approves Area Plans subject to a public hearing. Notification of the public hearing is in accordance to the provisions provided in the Modesto Zoning Ordinance. An Area Plan must be consistent with the Tivoli Specific Plan. The applicant must hold at least one meeting inviting all property owners within the Area Plan to discuss the proposed Area Plan before an application is submitted. The applicant must provide a record of the meeting. An Area Plan may be reviewed concurrently with a Final Development Plan and Tentative Map. There is no expiration date for an approved Area Plan.

#### 9.4.1.1 Contents of an Area Plan

In general, information needs to be included in an Area Plan so that the basic components, features and characteristics of the overall project can be discerned.

Exhibit 9.2 - TSP Area Plan Designation



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The Area Plan is not expected to be a blueprint of every detail associated with the project. Rather, it is to outline the key features and characteristics of the development proposed and how such development will relate and be connected to neighboring properties. Area plans must, at a minimum, include information on the following:

- Location and size of individual development sites or envelopes – i.e., areas within an area plan that have different land uses, a distinct density and/or housing type (detached, attached and clustered).
- General vehicular and pedestrian circulation patterns including points of connection to surrounding areas and major streets. The street patterns shall define arterial and collector streets and local streets at a site plan level defining blocks, lots, and project-density.
- Location of the "backbone" infrastructure to serve an Area Plan and how it connects to neighboring areas consistent with the approved FMP and IFP .
- For residential projects, statistical information demonstrating that the densities proposed comply with the project's land use designation(s) and is in accord with the Residential Density Development Standards and Design Guidelines . Description of the different housing types and residential densities. The plan shall include lot patterns and streets with dimensions. If an increase of Maximum Density within the LDR designation is proposed, the size, location, proposed density and number of dwelling units of the affected parcel shall be provided.
- Location and size of any public and private parks or greens, paseos/greenways, developed (landscape) or undeveloped open space or other public facilities, or utilities such as schools, reservoirs, pump stations, detention basins, etc.
- Location and description of any existing on-site development or other features shall be included.
- Existing physical hazards or constraints, biologically sensitive areas (if any) and cultural resource areas (if any).
- Location of entry monuments and gateway treatments, landscape edge treatments (including major roadways) other special landscape elements and any other special features proposed (e.g. fountains, gazebos, towers, water features, etc.).
- If the project is to be built in stages, a development phasing plan shall be provided.
- Other information deemed necessary by the Community and Economic Development Director or Designee.

#### 9.4.1.2 Final Development Plan

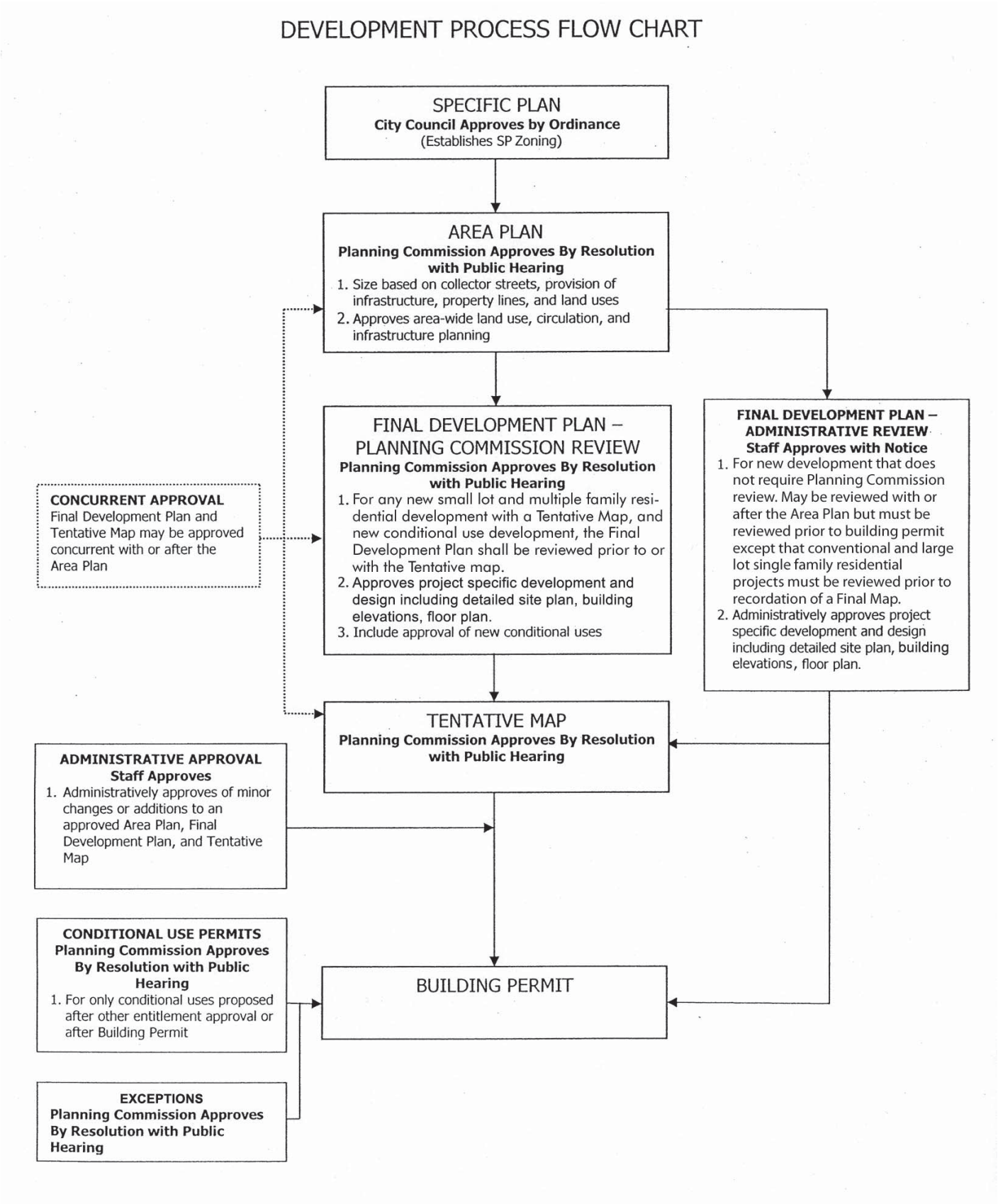
The purpose of a Final Development Plan is to review project specific development and design including detailed site plan, floor plans, and building elevations. A Final Development Plan must be consistent with the General Plan, Tivoli Specific Plan, Area Plan, and applicable Tentative Map. When a Final Development Plan is required, approval must be obtained prior to development. A Final Development Plan may be approved with or after the Area Plan. Refer to the Conditional Use Provisions in the Zoning Ordinance for time limits and expiration dates of Final Development Plan.

#### Planning Commission Review

A Final Development Plan reviewed by the Planning Commission is required for any new small lot residential development, and multiple family residential development with a map, and new conditional use development, (see Exhibit 9.3). A Final Development Plan must be reviewed prior to or with a Tentative Map.

The Planning Commission reviews Final Development Plans subject to a public hearing. Notification of the public hearing is in accordance to the provisions provided in the Modesto Zoning Ordinance. Review of "Conditional Uses" can be considered as part of a Final Development Plan by the Planning Commission.

## Exhibit 9.3 - Development Process Flow Chart



#### Administrative Review

A Final Development Plan is reviewed administratively for new development that does not require Planning Commission review.

The Community and Economic Development Director or Designee reviews Administrative Final Development Plans. Notification of the administrative decision requires mailed notice to surrounding neighbors in accordance to the California Government Code Sections 65090 and 65091. Conventional or large lot single-family residential development may have the Administrative Final Development Plan reviewed concurrent with or after a Tentative Map or Area Plan but must be prior to recordation of a Final Map. Other new development (such as a multiple family residential project without a map or commercial project that is not a conditional use) may have the Administrative Final Development Plan reviewed concurrent with or after an Area Plan but must be reviewed prior to issuance of a building permit. The director may refer an Administrative Approval to the Planning Commission for decision without a public hearing.

### 9.4.1.3 Tentative Map

A Tentative Map is an application to divide land for the purpose of sales, lease, or financing. The different types of Tentative Maps are defined in the State Subdivision Map Act. The two main types of maps are Tentative Subdivision Maps, generally the creation of five or more parcels, and Tentative Parcel Maps, generally the creation of four or fewer parcels.

The Planning Commission reviews Tentative Maps subject to a public hearing. Notification of the public hearing is in accordance with the provisions provided in the Subdivision Map Act. A Tentative Map approval must be consistent with the General Plan, Tivoli Specific Plan, Area Plan, applicable Final Development Plan, Modesto Subdivision Ordinance, and the State Subdivision Map Act.

### 9.4.1.4 Administrative Approval

An Administrative Approval is a staff level approval of minor changes or additions to an Area Plan, and Final Development Plan. A minor change or addition is a proposal that does not increase overall approved land use intensity, does not modify the general character and design, architectural style, circulation, and other site functions. An administrative approval must be consistent with the policies of the Specific Plan and shall not result in a substantial redesign of adjacent properties and shall remain compatable with surrounding planned and existing uses. In order for it to be an Administrative Approval, the proposal shall be consistent with the approved project and shall fall under the "Categorically Exemption" provision of the California Environmental Quality Act as amended by the State and shall not adversely affect neighboring properties.

The Community and Economic Development Director or designee approves Administrative Approvals. The Director may refer an Administrative Approval to the Planning Commission for decision without Public Hearing.

### 9.4.1.5 Conditional Use Permits

Conditional uses listed on the Permitted Use Table 3.2 are subject a to a Conditional Use Permit approval by the Planning Commission subject to a public hearing. Notification of the public hearing is in accordance to the provisions provided in the Modesto Zoning Ordinance. Conditional uses can also be approved in conjunction with a Final Development Plan.

### 9.4.1.6 Exceptions

Exceptions to the Tivoli Specific Plan development and design standards may be granted by the Planning Commission provided that the following findings can be made:

I. The granting of the exception will not be materially detrimental to the public welfare or injurious to other property or improvements in the vicinity and will not nullify the intent and purpose of the Specific Plan and General Plan, and

2. There are special exceptional and extraordinary circumstances or conditions applicable to the project site such as the size, shape, topography, or surroundings, that strict adherence of the standards would result in practical difficulties or unnecessary physical hardship inconsistent with the objectives of the Specific Plan and General Plan, or
3. Because of the unique nature of a particular development concept, design innovations are proposed that meet the functional standards of the Specific Plan standards without strict adherence to said standards and will result in a superior project with good land use relationship and compatibility of uses.

Consideration for Exceptions within TSP is subject to a public hearing. Notification of the public hearing is in accordance to the provisions provided in the Modesto Municipal Code.

Exceptions to the standards for home owners shall follow the Variance provisions of the Zoning Ordinance. In such case a Variance is reviewed and considered by the Board of Zoning Adjustment. See Table 9.1.

#### 9.4.1.7 Development Process Flow Chart

A schematic flowchart showing the general stages and sequence of a development project processing and approvals for the TSP is shown on Exhibit 9.3 Development Process Flow Chart.

#### 9.4.1.8 Revocations

Final Development Plans and Administrative Final Development Plans may be revoked consistent with Modesto Municipal code section 10-2.2410. The Planning Commission approves Revocations of Final Development Plans and Administrative Final Development Plans. The Community and Economic Development Director or designee approves revocations of Administrative Approvals.

#### 9.4.1.9 Appeals

Any administrative decision by the Community and Economic Development Director or designee may be appealed to the Planning Commission. Any decision by the Planning Commission may be appealed to the City Council.

Table 9.1 - Approval Authority

| Application | Staff | Board of Zoning Adjustment | Planning Commission | City Council |
|---|---|---|---|---|
| **Specific Plan Amendment** | | | | |
| Major | | | R | X |
| Minor | X | | A | A |
| **Area Plan** | | | X | A |
| **Final Development Plan** | | | | |
| Planning Commission | | | X | A |
| Administrative | X | | A | A |
| **Tentative Map** | | | X | A |
| **Final Map** | | | | X |
| **Conditional Use Permit** | | | X | A |
| **Exception** | | | X | A |
| **Variance** | | X | | A |
| **Administrative Approval** | X | | A | A |
| | | | | |
| R-Recommendation<br>X-Final Decision<br>A-Appeal | | | | |

## 9.5 Environmental Review

A Program Environmental Impact Report (PEIR) was prepared for the TSP. Proposed projects that are consistent with the PEIR may be approved subject to a Finding of Conformance. For projects that are not fully consistent with the PEIR, only those factors with potential impacts will require additional analysis. Such analysis will be provided using a Mitigated Negative Declaration, Subsequent or Supplemental EIR consistent with CEQA guidelines. See Chapter 8, Environmental Resources, for additional discussion about the environmental issues.

### 9.5.1 Mitigation Monitoring Program

The monitoring program provides a summary of required mitigation for impacts attributable to the project, identifies the party responsible for the monitoring the mitigation measures, and identifies the timing when the measure is to be completed. The City has prepared the mitigation monitoring program in conjunction with the preparation of the Final EIR. The mitigation monitoring program is available as a separate appendix document to the TSP.

## 9.6 Development Agreement

Development Agreements are permissible for any phase of the project. Section 65865 of the State Government Code provides that any city and/or county may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property.

A development agreement is a legislative act which shall be approved by ordinance and is subject to referendum. A development agreement shall not be approved unless the City Council of the City of Modesto finds that the provisions of the agreement are consistent with the City's General Plan and the TSP itself. A development agreement shall be consistent with City Policy No. 97-492, as amended or updated, which sets forth rules and regulations establishing procedures and requirements for consideration of development agreements.

Before the development agreement is approved, a public hearing on the application shall be held by the Planning Commission and the City Council. Notice of the intent to consider adoption of the development agreement shall be given as provided in Sections 65090 and 65091 in addition to any other notice required by law for the other action to be considered concurrently with the development agreement.

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