

Section IX Plan Administration

According to California Government Code Section 65451, Specific Plans shall include a program of implementation that includes a discussion on administration, subsequent entitlements, phasing and financing. This chapter outlines the methods by which the Specific Plan implementation will be administered.

A. Adoption

The principal method by which a city implements a 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 California State Government Code, Section 65453, the KBPSP and its accompanying Facilities Master Plan and Infrastructure Financing Plan shall be adopted in the same manner as a General Plan. The City's established policy has been to adopt specific plans by ordinance and applicable project related fees by resolution.

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

The regulatory elements of this Specific Plan are approved by resolution that are consistent with the City General Plan and Zoning Ordinance and are subject to the enforcement requirements found in the Zoning Ordinance. The City of Modesto Zoning Ordinance specifies the City's enforcement procedures.

The City of Modesto Community & Economic Development Department is responsible for the administration, implementation and the enforcement of this Specific Plan. This Specific Plan delegates implementing decisions for consideration to the Planning Manager within the Community & Economic Development Department - Planning Division.

The process of adoption of a Specific Plan requires a public hearing by both the Planning Commission and the City Council. Upon receipt of the recommendation of the Planning

Commission, the City Council may then vote to adopt or deny the Specific Plan.

B. Specific Plan Amendment Procedures

1. Amendments and Administrative Modifications

Policy I-10: Because of its programmatic nature and future changes in economic conditions, the Specific Plan may require amendment. The following process shall be followed for amending the Kiernan Business Park Specific Plan.

Amendments to the KBPSP will be classified as either minor or major (substantial) in significance.

a. Minor Amendments

Minor amendments include simple modifications to text or graphics that do not change the meaning, intent, or are contrary to any provision of the KBPSP. For example, a minor amendment could be a minor acreage adjustment between adjacent land use designations that does not increase the 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 and may be appealed to the Planning Commission.

b. Major Amendments

Major (substantial) modifications are amendments to exhibits or text that change the intent of the development standards or other significant provisions of the KBPSP. Major amendments result in an increase in the maximum number of residential units or commercial area, a substantial modification in the amount of park area, the general circulation system layout, or development standards and design guidelines, 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 KBPSP 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 amendment 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 ensure that the KBPSP remains consistent with the comprehensive planning district (CPD) it is situated in (Kiernan-Carver CPD), adjacent and adopted specific plans and the overall General Plan of the City.
- Amendments to the KBPSP may be subject to environmental analysis. This will include an analysis of consistency with the EIR prepared for the KBPSP, 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 KBPSP. 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 KBPSP.

c. 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.

d. Interpretations

When there is a question or ambiguity regarding the interpretation of any provision of the KBPSP, 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.

e. 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, adoptions and any associated revisions or major amendment to the KBPSP, 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.

f. Severability

If and regulation, condition, or program portion thereof the KBPSP is for any reason held invalid or unconstitutional, by a court of 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.

g. Indemnity

The KBPSP applicant shall indemnify, defend and hold harmless the City of Modesto, its agents,

officers and employees from any and all claims, actions and 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 KBPSP and its related documents (e.g. Environmental Impact Reports, Facilities Master Plan or Finance Plan)

C. *Environmental Review of Subsequent Project Approvals*

Individual development projects within the KBPSP area will be required to obtain subsequent entitlements as discussed further below. Many of the subsequent project approvals will be subject to CEQA review.

Environmental review of subsequent projects will be conducted using the analysis and conclusions of previous environmental documents to the extent feasible. The City of Modesto Community and Economic Development Department will determine the appropriate level of environmental review. Such review may, depending on the issues involved, require a negative declaration, a mitigated negative declaration, or an EIR.

D. *Development Plan Review*

All development for uses permitted in the Kiernan Business Park Specific Plan shall be subject to Development Plan Review approval, in accordance with Article 10, Chapter 9 of Title 10 of Modesto Municipal Code.

E. *Tentative Map*

Policy I-11: The City shall not authorize public improvements or land use entitlements (subdivision, conditional use permits, design review, etc.) until a finding has been made that the proposed project is in substantial compliance with all Policies and the Specific Plan.

Policy I-12: Each tentative subdivision map application within the Specific Plan area shall provide final design of connector and local roads according to Figure III-2 of the Specific Plan.

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 the 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, Kiernan Business Park Specific Plan, applicable Final Development Plan, applicable Administrative Final Development Plan, Modesto Subdivision Ordinance, and the State Subdivision Map Act.

F. *Conditional Use Permits*

After approval of an entitlement listed above or building permit, conditional uses listed in Section III are subject to a Conditional Use Permit approval by the Board of Zoning Adjustment subject to a public hearing. Notification of the public hearing is in accordance to the provisions provided in the Modesto Zoning Ordinance.

G. *Public Dedications*

Dedications for public rights of way, utility, and/or drainage and water quality easements shall be offered in the form of Irrevocable Offers of Dedication or shall be dedicated on the Final Map. Such dedications shall be implemented in conjunction with the applicable entitlement approvals such as tentative parcel maps. Dedication requirements are anticipated to implement the intent of the Specific Plan.

H. *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 KBPSP 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.

I. *Appeal*

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 or Board of Zoning Adjustment may be appealed to the City Council.

J. *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 KBPSP, including CEQA review.

Table IX-1 Approval Authority

APPLICATION	STAFF	BOARD OF ZONNING ADJUSTMENT	PLANNING COMMISSION	CITY COUNCIL
Specific Plan Amendment				
Major			R	X
Minor	X		A	A
Development Plan Review	X			
Tentative Map			X	A
Final Map				X
Conditional Use Permit		X		A
Exception			X	A
Variance		X		A
R=Recommendation X= Final Decision A= Appeal				

FIGURE IX-1 DEVELOPMENT PROCESS FLOW CHART