

LS 12.14.20

RESOLUTION NO. 2021-xx

A RESOLUTION OF CITY COUNCIL OF THE CITY OF SANTA ANA ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM, ENVIRONMENTAL REVIEW NO. 2020-48, RELATIVE TO GENERAL PLAN AMENDMENT NO. 2020-07 AND AMENDMENT APPLICATION NO. 2020-05 FOR THE PROJECT LOCATED AT 2530 AND 2534 WESTMINSTER AVENUE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Brian Hendricks, representing Community Development Partners ("Applicant"), is requesting approval of General Plan Amendment (GPA) No. 2020-07 to amend the General Plan land use designation of the project site from General Commercial (GC) to Urban Neighborhood (UN) and Amendment Application (AA) No. 2020-05 to change the zoning designation of the project site from General Commercial (C2) to Specific Development No. 97 (SD-97) in order to facilitate the construction of an 85-unit affordable housing development at 2530 and 2534 Westminster Avenue.
- B. The provisions of the California Environmental Quality Act of 1970 (CEQA), Public Resources Code Sections 21000 et. seq., as amended, and the CEQA Guidelines require the evaluation of environmental impacts in connection with proposals for discretionary projects.
- C. Pursuant to the Guidelines for the Implementation of the CEQA, an Initial Study relative to the proposed project concluded that implementation of the project could result in potentially significant effects on the environment and identified mitigation measures for the development site (2530 and 2534 Westminster Avenue) that would reduce the significant effects to a less-than-significant level.
- D. The City of Santa Ana prepared a Mitigated Negative Declaration (MND), Environmental Review (ER) No. 2020-48 for the proposed project, attached hereto as Exhibit A and incorporated herein by reference. The MND reflects the City's independent judgement and analysis as lead agency for the

project. The MND concluded that the project site would have a less than significant environmental impact with implementation of mitigation measures. Mitigation measures are included to address biological resources, cultural resources, geology and soils, noise, and tribal cultural resources.

- E. On November 6, 2020, a Notice of Intent (NOI) to adopt the Initial Study and MND, ER No. 2020-48, was published in the Orange County Register, a newspaper of general circulation, and was circulated to interested parties.
- F. The documents related to the MND were made available for a 20-day public review and comment period at the Santa Ana City Hall and on the project's webpage on the City's website. At the completion of the comment period, comments from Orange County Fire Authority (OCFA) and one resident were incorporated into the Final MND.
- G. The mitigation measures set forth in the MND are fully enforceable and will be implemented using the Mitigation Monitoring and Reporting Program (MMRP), attached hereto as Exhibit B and incorporated herein by reference.
- H. On December 14, 2020, the Planning Commission of the City of Santa Ana held a duly noticed public hearing and recommended that the City Council adopt MND, ER No. 2020-48, and the related MMRP for the project.
- I. On January 19, 2021, the City Council of the City of Santa Ana held a duly noticed public hearing and voted to approve a resolution to adopt MND, ER No. 2020-48, and the related MMRP for the project.

Section 2. The City Council has independently reviewed and analyzed the information contained in the Initial Study and the MND, ER No. 2020-48, prepared with respect to this project. The City Council has, as a result of its consideration and the evidence presented at the hearings on this matter, determined that, as required pursuant to the CEQA and the State CEQA Guidelines, the MND adequately addresses the expected environmental impacts of this project. On the basis of this review, the City Council finds that there is no substantial evidence from which it can be fairly argued that the project will have a significant adverse effect on the environment.

Section 3. The City Council hereby adopts the MND, attached hereto as Exhibit A, and the MMRP, attached hereto as Exhibit B, and directs that a Notice of Determination be prepared and filed with the County Clerk of the County of Orange in the manner required by law. This decision is based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for City Council Action dated January 19, 2021 and exhibits attached hereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

Section 4. Pursuant to Title XIV, California Code of Regulations (CCR) § 735.5(c)(1), the City Council has determined that, after considering the record as a whole, there is no evidence that the proposed project will have the potential for any significant adverse effect on wildlife resources or the ecological habitat upon which wildlife resources depend. The proposed project exists in an urban environment characterized by paved concrete, roadways, surrounding buildings and human activity. However, pursuant to Fish and Game Code § 711.2 and Title XIV, CCR § 735.5, the payment of Fish and Game Department filing fees in conjunction with this project is at the discretion of the State of California Department of Fish and Wildlife.

Section 5. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 6. This decision rendered by the City Council of the City of Santa Ana is final and is subject to judicial review pursuant to California Code of Civil Procedure Section 1094.6. The Planning and Building Agency shall give direct notice to the Applicant of the City Council's decisions and these findings.

ADOPTED this ____ day of _____, 2021.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

By: *Lisa E. Storck* Type text here
Lisa Storck
Assistant City Attorney

AYES: Councilmembers _____
NOES: Councilmembers _____
ABSTAIN: Councilmembers _____
NOT PRESENT: Councilmembers _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2021-xx to be the original resolution adopted by the City Council of the City of Santa Ana on _____.

Date: _____

Clerk of the Council
City of Santa Ana

EXHIBIT A
MITIGATED NEGATIVE DECLARATION

The Mitigated Negative Declaration for the Project and Technical Studies are available online at:

<https://www.santa-ana.org/pb/planning-division/major-planning-projects-and-monthly-development-project-reports/Westview-Housing>

Or by visiting:

Planning and Building Agency – Planning Division Public Counter

20 Civic Center Plaza

Santa Ana, CA 92701

EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM

The California Environmental Quality Act (CEQA) requires that a reporting or monitoring program be adopted for the conditions of project approval that are necessary to mitigate or avoid significant effects on the environment (Public Resources Code [PRC] 21081.6). PRC Section 21081.6 provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined prior to final certification of the Final Initial Study-Mitigated Negative Declaration (IS-MND).

This Mitigation Monitoring and Reporting Program (MMRP) is intended to track and ensure compliance with adopted mitigation measures during the project implementation phase. For each mitigation measure recommended in the Final IS-MND, specifications are made herein that identify the action required, the monitoring that must occur, and the agency or department responsible for oversight.

The table below, lists mitigation measures that reduce the potentially significant effects of the proposed project. These measures correspond to those discussed in in the IS-MND. To ensure that the mitigation measures are properly implemented, a monitoring program has been devised that identifies the timing and entity/agency responsible for monitoring each measure. The City of Santa Ana will have the responsibility for implementing the measures, and various public agencies will have the primary responsibility for enforcing, monitoring, and reporting the implementation of the mitigation measures.

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
Biological Resources							
BIO-1 Nesting Bird Avoidance							
<p>To avoid disturbance of nesting birds, including raptorial species protected by the MBTA and CFGC, activities related to the project, including, but not limited to, vegetation removal, ground disturbance, and construction and demolition shall occur outside of the bird nesting season (February 1 through August 31, but variable based on seasonal and annual climatic conditions). If construction must begin during the breeding season, then a pre-construction nesting bird survey shall be conducted no more than seven days prior to initiation of construction activities. The nesting bird pre-construction survey shall be conducted on foot inside the project site, including a 100-foot buffer, and in inaccessible areas (e.g., private lands) from afar using binoculars to the extent practical. The survey shall be conducted by a qualified biologist familiar with the identification of avian species known to occur in southern California.</p> <p>If nests are found, an avoidance buffer shall be demarcated by a qualified biologist with bright orange construction fencing, flagging, construction lathes, or other means to mark the boundary. All construction activities shall occur within this buffer until the biologist has confirmed that breeding/nesting is completed, and the young have fledged the nest. Encroachment into the buffer shall only occur at the discretion of the qualified biologist.</p> <p>A survey report by the qualified biologist documenting and verifying compliance with this measure and with applicable state and federal regulations protecting nesting birds shall be submitted to the City. The qualified biologist shall serve as a construction monitor during those periods when construction activities occur near active nests to ensure that no inadvertent impacts on the nests occur.</p>	<p>Verify completion of pre-construction nesting bird survey (if construction begins during the breeding season) prior to initiation of construction activities</p> <p>Verify implementation of avoidance buffer, if nest are found</p> <p>Verify completion of survey report documenting compliance</p>	<p>Survey verification prior to issuance of grading permits</p> <p>Field verification as needed during construction activities</p> <p>Survey report verification following compliance with measure</p>	<p>Once for bird survey</p> <p>Field verification periodically throughout construction</p> <p>Once for survey report</p>	<p>City of Santa Ana Planning and Building Agency</p>			
Cultural Resources							

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
CR-1 Archeological Resource Construction Monitoring							
Prior to the issuance of a grading permit, the property owner/developer shall retain a qualified archeologist meeting the Secretary of the Interior's Professional Qualification Standards for archaeology (National Park Service 1983) to be present during all initial subsurface ground-disturbing construction activities. At the commencement of construction activities, an orientation meeting shall be conducted by the qualified archeologist, construction manager, general contractor, subcontractor, and construction workers associated with ground-disturbing activities. The orientation meeting shall describe the potential of exposing archeological resources, the types of resources that may be encountered, and directions on the steps that shall be taken if such a find is encountered.	Verify project has retained qualified archeologist to be present during all initial subsurface ground-disturbing construction activities Verify completion of orientation meeting at commencement of construction activities and review documentation demonstrating worker attendance	Prior to issuance of any grading permits At the commencement of ground-disturbing activities, thereafter, every eight weeks unless there are no new construction personnel	Once for archeologist retention Continuous throughout grading and ground disturbing activities	City of Santa Ana Planning and Building Agency			
CR-2 Unanticipated Discovery of Archeological Resources							
If archeological resources are encountered during ground-disturbing activities, the construction manager shall immediately halt all work activities within 100 feet of the discovery and a qualified archeologist meeting the Secretary of the Interior's Professional Qualification Standards for archeology (National Park Service 1983) shall immediately evaluate the find. After cessation of ground-disturbing activities, the construction manager shall immediately contact the City's Planning and Building Agency. Work shall not resume until authorized by the Director/Manager (or his/her designee), and the qualified archeologist.	Field verify ground-disturbing construction activities have ceased, if archaeological resources are found Consult with qualified archeologist for appropriate treatment of find	On an as-needed basis if archaeological resources are found	Once for ceased construction activities As needed for consultation efforts	City of Santa Ana Planning and Building Agency			
If the qualified archeologist determines that the discovery constitutes a significant resource under CEQA, preservation in place is the preferred manner of mitigation. In the event preservation in place is demonstrated infeasible, and data recovery is determined to be the only feasible mitigation option, a detailed Cultural Resources Treatment Plan shall be prepared and implemented by a qualified archeologist in	Consult with Native American representatives for appropriate treatment of find, as needed						

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments

consultation with the City. The City shall consult with appropriate Native American representatives in determining appropriate treatment for unearthed cultural resources if the resources are prehistoric or Native American in origin. Archeological materials recovered during any investigation shall be put into curation at an accredited facility.

Geology and Soils

GEO-1 Paleontological Resources Management Program

The following mitigation measures shall only be implemented during ground construction activities (i.e., grading, trenching, foundation work, excavations) where ground disturbance exceeds nine feet below ground surface within project areas underlain by Quaternary young alluvial fan deposits.

- Mitigation and Monitoring Program.** The Paleontological Mitigation and Monitoring Program shall be supervised by a qualified paleontologist. A qualified paleontologist is an individual who meets the education and professional experience standards as set forth by the SVP (2010), which recommends the paleontologist shall have at least a Master's Degree or equivalent work experience in paleontology, shall have knowledge of California geology and local paleontology, shall be familiar with paleontological procedures and techniques, and who has worked as a paleontological mitigation project supervisor for at least one year. Monitoring shall be conducted by a qualified paleontological monitor, who is defined as an individual who has experience with collection and salvage of paleontological resources.
- Paleontological Worker Environmental Awareness Program (WEAP).** Prior to the start of construction, the Qualified Paleontologist or his or her designee, shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should

If ground disturbance exceeds nine feet below ground surface within project areas underlain by Quaternary young alluvial fan deposits:

Verify retention of qualified paleontological monitor

Verify completion of training at commencement of construction activities

Field verify ground-disturbing construction activities have ceased, If paleontological resources are found

Consult with qualified archaeologist and verify completion of final mitigation and monitoring report

On an as-needed basis if described ground-disturbing activities occur

Training verification prior to the start of construction

Mitigation and monitoring report verification following compliance with measure

Once each for paleontologist retention, training, ceased construction activities, and monitoring report

City of Santa Ana Planning and Building Agency

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<p>fossils be discovered by construction staff. The WEAP shall be fulfilled at the time of a preconstruction meeting. In the event a fossil is discovered by construction personnel anywhere in the project area, all work in the immediate vicinity of the find shall cease and a qualified paleontologist shall be contacted to evaluate the find before restarting work in the area. If it is determined that the fossil(s) is (are) scientifically significant, the qualified paleontologist shall complete the mitigation outlined below to mitigate impacts to significant fossil resources.</p>							
<p>3. Resource Recovery and Management Plan. Ground-disturbing activity that does not exceed nine feet in depth in areas of low paleontological sensitivity shall not require paleontological monitoring. Any excavations within undisturbed bedrock in areas of high paleontological sensitivity (i.e., Pleistocene-aged deposits), and excavations that exceed nine feet in depth in those areas potentially underlain by Pleistocene-aged deposits (i.e., Holocene-aged alluvial sediments) shall be monitored on a full-time basis by a qualified paleontological monitor. If no fossils are observed during the first 50 percent of excavations in Holocene-aged sediments exceeding nine feet in depth, or if the qualified paleontologists can determine that excavations below nine feet are not disturbing Pleistocene-aged (or other potentially fossil-containing) sediments, then paleontological monitoring can be discontinued or reduced to spot-checking under the discretion of the qualified paleontologist, subject to approval from Orange County.</p> <p>If fossils are discovered, the qualified paleontologist (or paleontological monitor) shall recover them. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage</p>							

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<p>periods. Should larger fossils be discovered, the qualified paleontologist shall have the authority to temporarily direct, divert or halt construction activity to ensure that the fossil(s) can be removed in a safe and timely manner.</p> <p>Once salvaged, fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready condition and curated in a scientific institution with a permanent paleontological collection (such as the University of California Museum of Paleontology or other institution determined by the City of Santa Ana or Orange County), along with all pertinent field notes, photos, data, and maps.</p> <p>Upon completion of ground-disturbing activities (and curation of fossils if necessary), the qualified paleontologist shall prepare a final mitigation and monitoring report outlining the results of the mitigation and monitoring program. The report shall include discussion of the location, duration and methods of the monitoring, stratigraphic sections, any recovered fossils, and the scientific significance of those fossils, and where fossils were curated.</p>							

Noise							
N-1 Interior Noise Reduction							
<p>To comply with Title 24, Part 2, Section 1206.4 (Allowable Interior Noise Levels) of the California Code of Regulations, the applicant shall install exterior building materials with sufficient Sound Transmission Class (STC) ratings to reduce interior noise levels in habitable rooms to below 45 CNEL. To reduce potential noise impacts to future project residents, residential units with line-of-sight to Westminster Avenue shall incorporate design measures for windows, walls, and doors that achieve a composite STC rating of at least 30 and all exterior doors and windows shall be installed such that there are no air gaps or perforations. This requirement shall be incorporated into the plans to be submitted by the</p>	<p>Review and verify final construction plans for implementation of interior noise reduction measures</p>	<p>Plan verification prior to the issuance of building permits</p>	<p>Once each for construction plans and acoustical analysis</p>	<p>City of Santa Ana Planning and Building Agency</p>			
	<p>Review and verify completion of acoustical analysis</p>	<p>Acoustical analysis verification prior to issuance of occupancy permit</p>					

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
applicant to the City of Santa Ana for review and approval prior to the issuance of building permits. Acoustical analysis shall be performed prior to the issuance of an occupancy permit to demonstrate that noise levels in the interior livable spaces do not exceed the interior noise standard of 45 CNEL in any habitable room as set forth by the City of California Code of Regulations, Title 24, Section 1206.4							
N-2 Exterior Noise Reduction							
The applicant shall implement sound attenuation features to reduce noise levels at all private outdoor livable spaces (i.e., balconies) on residential units and patios fronting Westminster Avenue and North Fairview Street. Such features may include the use of solid material for balcony or parapet construction such as double-paned or laminated glass, Plexiglass, or wood. This requirement shall be incorporated into the plans to be submitted by the applicant to the City of Santa Ana for review and approval prior to the issuance of building permits. Acoustical analysis shall be performed prior to the issuance of an occupancy permit to demonstrate that noise levels at the exterior livable spaces do not exceed the City's exterior noise standard of 65 CNEL.	Review and verify final construction plans for implementation of exterior noise reduction measures Review and verify completion of acoustical analysis	Plan verification prior to the issuance of building permits Acoustical analysis verification prior to issuance of occupancy permit	Once each for construction plans and acoustical analysis	City of Santa Ana Planning and Building Agency			
N-3 Outdoor Noise Attenuation							
The applicant shall implement sound attenuation features to reduce recreation noise from the playground area on the adjacent single-family residence south of the playground. Such features may include a CMU wall, or other wall constructed of solid material, at least eight feet in height along the southern boundary of the playground area. This requirement shall be incorporated into the plans to be submitted by the applicant to the City of Santa Ana for review and approval prior to the issuance of building permits.	Review and verify final construction plans for implementation of sound attenuation features	Plan verification prior to the issuance of building permits	Once for construction plans	City of Santa Ana Planning and Building Agency			
Tribal Cultural Resources							
TCR-1 Tribal Cultural Resource Construction Monitoring							

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<p>Prior to the issuance of any permits for initial site clearing (such as pavement removal, grubbing, tree removals) or issuance of permits allowing ground-disturbing activities that cause excavation to depths greater than artificial fill (including boring, grading, excavation, drilling, potholing or auguring, and trenching), the City of Santa Ana shall ensure that the project applicant/developer retain a qualified Native American Monitor(s) with ancestral ties to the project area and approved by the tribe(s) that consulted on this project pursuant to AB 52 (the "Tribe(s)" or "Consulting Tribe(s)"). A copy of the executed contract shall be submitted to the City of Santa Ana Planning and Building Department. The Monitor(s) will only be present on-site during initial site clearing and construction that involves ground disturbing activities. Ground-disturbing activities are defined as activities that may include, but are not limited to, pavement removal, potholing or auguring, grubbing, tree removals, boring, grading, excavation, drilling, and trenching, within the project area. The Monitor(s) will complete daily monitoring logs that will provide descriptions of the day's activities, including construction activities, locations, soil, and any cultural materials identified. The on-site monitoring shall end when all ground disturbing activities on the project site are completed, or when the archeologist and Native American Monitor(s) have indicated that all upcoming ground-disturbing activities at the project site have little to no potential for impacting tribal cultural resources.</p>	<p>Verify project has retained qualified Native American Monitor(s)</p> <p>Review and verify executed contract</p>	<p>Prior to the issuance of initial site clearing permits or ground-disturbing activity permits</p>	<p>Once each for monitor retention and contract review</p>	<p>City of Santa Ana Planning and Building Agency</p>			
TCR-2 Unanticipated Discovery of Tribal Cultural Resources							
<p>In the event that tribal cultural resources are inadvertently discovered during ground-disturbing activities, construction activities shall cease in the immediate vicinity of the find (not less than the surrounding feet) until the find can be assessed by the qualified archeologist and Native American Monitor(s) approved by the Consulting Tribe(s). If the resources are Native American in origin, the Consulting Tribe(s) will retain it/them in the form and/or manner the Tribe</p>	<p>Field verify ground-disturbing construction activities have ceased, if cultural resources are found</p> <p>Consult with Native American</p>	<p>On an as-needed basis if cultural resources are found</p>	<p>Once for ceased construction activities</p> <p>As needed for consultation efforts</p>	<p>City of Santa Ana Planning and Building Agency</p>			

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<p>deems appropriate, for educational, cultural and/or historic purposes.</p> <p>If human remains and/or grave goods are discovered or reorganized at the project site and are determined to be Native American in origin, the NAHC shall be notified and a MLD shall be designated. The MLD shall work with the developer and the City to determine the treatment of the human remains and any grave/burial goods. Human remains and grave/burial goods shall be treated alike per PRC Section 5097.98(d)(1) and (2). Work may continue on other parts of the project site while evaluation and, if necessary, mitigation takes place (CEQA Guidelines Section 1.5064.5(f)).</p>	<p>representatives for appropriate treatment of find, as needed</p>						