

RESOLUTION NO. 2022-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA DENYING APPEAL APPLICATION NOS. 2022-01 AND 2022-02 AND UPHOLDING THE DETERMINATION OF THE PLANNING COMMISSION TO APPROVE CONDITIONAL USE PERMIT NO. 2022-14 AS CONDITIONED TO ALLOW A DISTRIBUTION FACILITY FOR THE PROPERTY LOCATED AT 1700, 1720, AND 1740 EAST GARRY AVENUE (APN 430-171-07)

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. Rob Mitchell (“Applicant”), representing Greenlaw Partners (“Property Owner”) is requesting approval of Conditional Use Permit No. 2022-14 to allow a warehouse distribution facility at the property located at 1700, 1720, and 1740 East Garry Avenue (APN 430-171-07).
- B. Concurrently, the Applicant is requesting approval of Amendment Application (AA) No. 2022-01 to change the zoning designation of the property from Professional (P) to Light Industrial (M1) in order to facilitate construction of the subject 91,500-square foot industrial warehouse and distribution building.
- C. Pursuant to Santa Ana Municipal Code (“SAMC”) Section 41-472.5(i), a Conditional Use Permit is required for distribution facilities in the M1 zoning district within the City of Santa Ana.
- D. On August 22, 2022, the Planning Commission held a duly noticed public hearing on Conditional Use Permit No. 2022-14 approving the establishment of a distribution facility at the subject property. Following information received during the public hearing, the Planning Commission continued the item to its regular meeting on September 26, 2022, after which the project was continued to its regular meeting on October 10, 2022. During said October 10, 2022 meeting, the Planning Commission voted unanimously to adopt a resolution approving Conditional Use Permit No. 2022-14 and to recommend that the City Council adopt an ordinance approving Amendment Application No. 2022-01.
- E. On October 18, 2022 and on October 19, 2022, appellants Molly Greene with Lozeau Drury LLP, on behalf of Supporters Alliance for Environmental Responsibility (SAFER) and Melinda Luthin with Melinda Luthin Law, on behalf of Garry Plaza Office Park Association, filed respective appeal

applications, Appeal Nos. 2022-01 and 2022-02, respectively, for Conditional Use Permit No. 2022-14. Pursuant to SAMC Section 41-645, the City Council is authorized to review appeals of Planning Commission decisions and may, after holding a public hearing, affirm, reverse, change, modify the original decision and may make any additional determination it shall consider appropriate within the limitations imposed by Chapter 41 of the SAMC. To support the City's recommendation to deny the appeal applications and uphold the Planning Commission's approval of Conditional Use Permit No. 2022-14, the City prepared a response to the comments contained within both appeals, attached to the Request for Council Action (RFCA) staff report, dated December 20, 2022, contained within the report and attached thereto as Exhibit 13.

- F. On December 20, 2022, the City Council held a duly noticed public hearing on Amendment Application No. 2022-01 and on Appeal Nos. 2022-01 and 2022-02 for Conditional Use Permit No. 2022-14.
- G. The City Council determines that the following findings, which must be established in order to grant this CUP pursuant to SAMC Sections 41-638 and 41-645, have been established for Conditional Use Permit No. 2022-14 to allow a new warehousing and distribution facility within the M1 zoning district:
 - 1. That the proposed use will provide a service or facility which will contribute to the general well-being of the neighborhood or the community.

The proposed use will contribute to the general well-being of the community by providing a use that satisfies a growing demand for warehousing and distribution activities in the region, following the effects of the Covid-19 pandemic. The site plan and building have been designed to minimize impacts on surrounding properties and to enhance the surrounding community with a building and site that will provide elevated architecture, landscaping, site, and right-of-way improvements.

- 2. That the proposed use under the circumstances of the particular case will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed warehouse and distribution facility at this location would not be detrimental to persons residing or working in the area as the subject site is located within a professional office and light industrial area and not immediately adjacent to residential uses, schools, or parks. The nearest residential property is 0.43 miles (2,290 feet) due north from the subject site, across the Costa Mesa (SR-55)

Freeway. In addition, the project site is located within an area that is not near sensitive land uses such as residential neighborhoods, schools, or parks. Moreover, access to the SR-55 Freeway is provided at the Dyer Road interchange, by way of Garry Avenue and Pullman Street, a driving distance of less than 0.50 miles. Moreover, the loading docks have been positioned at the south of the building in order to minimize noise and aesthetic impacts onto surrounding properties. Following public comments provided during the August 22, 2022 regular Planning Commission meeting, the applicant modified the site plan to include height-restriction bars that will prohibit truck traffic on the eastern portion of the site, thereby minimizing impacts to the adjacent properties.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The proposed facility would be compatible with the surrounding area and will not adversely affect the economic viability in the area. The proposed use would redevelop a site containing aging office buildings with a modern warehousing and distribution facility that has been designed to minimize impacts onto surrounding land uses and to conform to all applicable development standards of the M1 zoning district. The project site is in an area identified by the General Plan for industrial uses, pursuant to the Industrial/FLEX land use designation. Vehicles and trucks entering and departing from the project site will not travel through any neighborhoods containing sensitive land uses, such as residences, schools, or parks. The new General Plan also designates surrounding properties Industrial/FLEX, and Garry Avenue and Pullman Street provide direct access to the SR-55 Freeway by way of the Dyer Road interchange, a driving distance of half a mile (0.50 miles).

4. That the proposed use shall comply with the regulations and conditions specified in Chapter 41 for such use.

The use will comply with all regulations and conditions identified in Chapter 41 (Zoning Code) of the Santa Ana Municipal Code. In addition to conforming to the development standards of the proposed M1 zoning district designation, the project and site plan have been designed to minimize impacts onto surrounding properties. Primarily, the building's loading docks have been placed facing south toward the vacant Alton

Avenue right-of-way, to minimize noise and aesthetic impacts onto adjacent, developed properties. The site plan has been designed such that should the Alton Avenue bridge over the SR-55 Freeway be constructed, the project would continue to satisfy all applicable landscape and solid screen wall requirements. As the SR-55 Freeway widening project commences in earnest in late 2022, the project will continue to be able to provide a 10-foot wide landscape buffer along the freeway, which will allow for mature trees, shrubs, and groundcover to be maintained long-term along the project site's western (freeway-adjacent) landscape strip.

5. That the proposed use will not adversely affect the General Plan or any specific plan of the City.

The CUP would not adversely affect the General Plan or any specific plan of the City. The CUP is consistent with various goals and policies of the General Plan. These include: Goal LU-1 (Growing responsibly), Policy LU-1.9 (Public facilities and infrastructure); Goal LU-2 (Land Use Needs), Policies LU-2.1 (Employment opportunities), LU-2.6 (Encourage investment), LU-2.7 (Business incubator), and LU-2.8 (City image); Goal LU-3 (Compatibility of uses), Policies LU-3.4 (Compatible development), LU-3.7 (Attractive environment), and LU-3.8 (Sensitive receptors); and Goal LU-4 (Complete communities), Policies LU-4.2 (Public realm) and LU-4.3 (Sustainable land use strategies). These goals and policies encourage developments that are compatible with surrounding properties, contribute to the overall development of the community, provide employment opportunities, and provide responsible developments that enhance the community. As analyzed in the Planning Commission and City Council staff reports prepared for the project, the proposed warehousing and distribution facility has been designed to satisfy all applicable General Plan goals and policies.

Section 2. The City Council has reviewed and considered the information contained in the analysis performed pursuant to the California Environmental Quality Act (CEQA) (Environmental Review No. 2021-54). Pursuant to Public Resources Code section 21083.3, and CEQA Guidelines Section 15183, the Project is exempt from further review. This type of exemption analysis evaluates whether the potential environmental impacts of the proposed demolition of three office buildings, which total 105,558 square feet, and construction of a new 91,500 square foot light industrial warehousing building that would accommodate two tenants, are addressed in the *City of Santa Ana General Plan Update Final Recirculated Program Environmental Impact Report* (GPU EIR). A rezoning that is consistent with an adopted general plan falls within this exemption.

A. As set forth in CEQA Guidelines Section 15183(a), projects that are “consistent with the development density established by the existing zoning, community plan or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” The CEQA Guidelines further state that “[i]f an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards . . . then an additional EIR need not be prepared for the project solely on the basis of that impact.” CEQA Guidelines Section 15183(c).

B. The GPU was adopted, and the GPU EIR certified, in April 2022 (State Clearinghouse Number 2020029087); the GPU went into effect on May 26, 2022. Any decision by the City affecting land use and development must be consistent with the GPU. The GPU EIR evaluates the potential environmental effects associated with implementation of the GPU and addresses appropriate and feasible mitigation measures that would minimize or eliminate these impacts. A project is consistent with the GPU if its development density is the same or less than the standard expressed for the involved parcel in the general plan for which an EIR has been certified, and the project complies with the density-related standards contained in that plan. CEQA Guidelines section 15183(i)(2). Development density standards can include the number of dwelling units per acre, the number of people in a given area, floor area ratio (FAR), and other measures of building intensity, building height, size limitations, and use restrictions.

C. The GPU identifies that the Interim Development Standard for the FLEX-3 area is M1. The M1 zone provides for a variety of light industrial uses, including warehousing, manufacture, assembly, machine shops, and wholesale businesses. The Project would result in a FAR of 0.42, which is within the projections of the GPU EIR, which evaluated a density of 3.0 FAR on the site. The GPU EIR adequately anticipated and analyzed the impacts of this Project and identified applicable mitigation measures necessary to reduce impacts of the Project, and the Project implements the applicable mitigation measures.

D. Specifically, the Project qualifies for the exemption because the following findings can be made:

1. The Project is consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified. The Project would result in a FAR of 0.42, which is less than the maximum FAR of 3.0 allowable in the FLEX-3 designated area, which is the development density established by the GPU and analyzed in the GPU EIR. The Project site has an Interim Development Standard of M-1 (light Industrial zone). The M-1 zone does not have density requirements.
2. There are no Project specific effects which are peculiar to the Project or its site, and which the GPU EIR failed to analyze as significant effects. The subject

property is similar to other properties in the area, including its land use designation and zoning. The property does not support any peculiar environmental features, and the Project would not result in any peculiar effects. In addition, as explained further in the prepared Exemption Checklist, Project impacts were adequately analyzed by the GPU EIR; and as detailed in the GPU EIR, development projects pursuant to the GPU, such as the proposed Project could result in potentially significant impacts to air quality, cultural resources, paleontological resources, noise, and tribal cultural resources. However, applicable mitigation measures specified within the GPU EIR would reduce potential impacts to a less than significant level.

3. There are no potentially significant off-site and/or cumulative impacts which the GPU EIR failed to evaluate. The Project is consistent with the density and use characteristics of the development considered by the GPU EIR and would represent a small part of the growth that was forecast for build-out of the GPU. The GPU EIR considered the incremental impacts of the Project, and as explained further in the prepared Exemption Checklist, no potentially significant off-site or cumulative impacts have been identified which were not previously evaluated.
4. There is no substantial new information which results in more severe impacts than anticipated by the GPU EIR. As explained in the prepared Exemption Checklist, no new information has been identified which would result in a determination of a more severe impact than what had been anticipated by the GPU EIR.
5. As explained in the prepared Exemption Checklist, the Project will undertake feasible mitigation measures specified in the GPU EIR. These GPU EIR mitigation measures will be undertaken through Project design, compliance with regulations and ordinances, and through the Project's conditions of approval.

E. The Project therefore qualifies for an exemption from additional environmental review as set forth in Public Resources Code section 21083.3 and CEQA Guidelines Section 15183. The full exemption analysis is provided as Exhibit 10 of the staff report accompanying this Resolution. Based on this analysis, a Notice of Exemption, Environmental Review No. 2021-54 will be filed for this project.

Section 3. The City Council hereby upholds the determination of the Planning Commission and approves Conditional Use Permit No. 2022-14 and denies Appeal Application Nos. 2022-01 and 2022-02. Conditional Use Permit No. 2022-14 shall not become effective until the City Council adopts an ordinance approving Amendment Application No. 2022-01, and said Amendment Application is in full force and effect.

Section 4. Conditional Use Permit No. 2022-14 shall not become effective until the City Council adopts an ordinance approving Amendment Application No. 2022-01, changing the subject property's zoning designation from Professional (P) to Light Industrial (M1), and said Amendment Application is in full force and effect.

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 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. The City Council of the City of Santa Ana, after conducting the public hearing hereby approves Conditional Use Permit No. 2022-14, as conditioned in Exhibit A, attached hereto and incorporated herein. 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 December 20, 2022, and exhibits attached thereto; and the public testimony, all of which are incorporated herein by this reference.

ADOPTED this ____ day of _____, 2022.

Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

By: John M. Funk
John M. Funk
Chief Assistant City Attorney

AYES: Councilmembers _____

NOES: Councilmembers _____

ABSTAIN: Councilmembers _____

NOT PRESENT: Councilmembers _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Clerk of the Council, do hereby attest to and certify the attached Ordinance No. NS-
_____ to be the original ordinance adopted by the City Council of the City of Santa
Ana on _____, 2022 and that said ordinance was published in accordance
with the Charter of the City of Santa Ana.

Date: _____

Clerk of the Council
City of Santa Ana

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2022-14

Conditional Use Permit No. 2022-14 is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with all applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code and all other applicable regulations.

The Applicant must comply in full with each and every condition listed below prior to exercising the rights conferred by this conditional use permit.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit. Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. The Applicant must comply with all conditions and requirements of the Development Review Committee for the Development Project (DP No. 2021-18).
2. The proposed facility shall be maintained as per approved plans and any existing landscaping shall be enhanced and well maintained. Any damage to existing structures, walls, parking areas, or landscaping must be repaired.
3. All activities shall be conducted entirely within the interior of the building. Outdoor activities shall be prohibited unless otherwise permitted by the City of Santa Ana or per Santa Ana Municipal Code Section 41-195.5.
4. Outdoor storage must be screened by solid walls, pursuant to Santa Ana Municipal Code Section 41-473.
5. The idling of trucks and passenger vehicles on and in the vicinity of the property, including on adjacent streets, is prohibited.
6. Contact information for an onsite manager or other individual responsible for the daily operations of the facility shall be posted in a prominent location at the front entry in the event that noise, traffic, and/or parking complaints need reporting.
7. Administrative offices shall not be subleased for uses not related to the warehousing and distribution facility.
8. Prior to issuance of a building permit for above-ground construction, the applicant shall record a parking and access easement allowing use of the eight (8) proposed parking spaces at the southeast portion of the project site by the adjacent property at 1800 East Garry Avenue (APN: 430-171-09).

9. Prior to issuance of a building permit for above-ground construction, the applicant shall coordinate with the adjacent property owner(s) at 1800 and 1820 East Garry Avenue to modify or remove any easements as necessary to facilitate construction of the proposed development. Proof of modification or removal of required easements shall be provided to the City prior to issuance of any building permit for above-ground construction.
10. Prior to issuance of a certificate of occupancy, the applicant shall install two height-restriction bars at the eastern driveway and at the southeast portion of the onsite parking lot to restrict truck traffic from the eastern portion of the site. The height-restriction bars shall be designed to allow passage of passenger vehicles but to prohibit large truck traffic from circulating on the eastern portion of the project site, as per Exhibit 5 of the October 10, 2022 Planning Commission and City Council staff reports.
11. The applicant and any subsequent association or management is responsible for installing and routinely maintaining high efficiency Minimum Efficiency Reporting Value (MERV) filters of MERV 13 or better as indicated by the American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 52.2, in the intake of ventilation systems. Verification of installation shall be provided prior to project occupancy.
12. Prior to issuance of a building permit, a Property Maintenance Agreement shall be recorded against the property. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Applicant (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
 - a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);
 - b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);

- c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
- d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);
- e) If Applicant and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms;
- f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement;
- g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City; and
- h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of final approval for any construction permit related to this entitlement.