

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW A 7,494-SQUARE FOOT DAY CARE CENTER WITH TWO OUTDOOR PLAY AREAS TOTALING 5,828 SQUARE FEET FOR A MAXIMUM OF 120 CHILDREN WITHIN AN EXISTING 16,977-SQUARE FOOT BUILDING, APPROVAL OF AN ALTERNATING USE PARKING ARRANGEMENT, AND CONSTRUCTION OF ON-SITE CIRCULATION IMPROVEMENTS AND TWO OUTDOOR PLAY AREAS ON AN APPROXIMATELY 0.78-GROSS ACRE SITE LOCATED ON THE EAST SIDE OF SEABOARD AVENUE, APPROXIMATELY 200 FEET SOUTHEAST OF WEST TRIMBLE ROAD (2586 SEABOARD AVENUE)**

**FILE NO. SP21-021**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on February 3, 2020, an application (File No. SP21-021) was filed by the applicant, John Ha, of IDA Inc, for David Lu, with the City of San José for a Special Use Permit to allow a day care center for a maximum of 120 children in an existing building, approval of an alternating use parking arrangement, and construction of on-site circulation improvements and two outdoor play areas on an approximately 0.78-gross acre site, on that certain real property located on the east side of Seaboard Avenue, approximately 200 feet southeast of West Trimble Road (2586 Seaboard Avenue, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit “A,” entitled “Legal Description,” and depicted in Exhibit “B,” entitled “Plat Map,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

**WHEREAS**, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing, this City Council received and considered the reports and recommendation of the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Sunny Childcare T.I. and CUP" dated April 23, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before this City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

**WHEREAS**, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the east side of Seaboard Avenue, approximately 200 feet southeast of West Trimble Road. The subject 0.78-gross acre site is currently developed with an existing 16,977-square foot, single-story church building. The site is surrounded by existing commercial and industrial uses to the west, north, and south, and the Guadalupe River is located to the east. There are no residential properties in the immediate vicinity of the project site.

2. **Project Description.** On February 3, 2020, the applicant, John Ha, of IDA Inc., filed an application to rezone an approximately 0.78-gross acre site from the LI Light Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District and approve a Special Use Permit for a day care center for a maximum of 120 children ages 0 to 5 years old with 11 employees, alternating use parking arrangement, and on-site circulation improvement.

The day care center would occupy 7,494 square feet of an existing 16,977-square foot building, and the remaining 9,518 square feet of interior space would continue to be utilized for the existing church use. The existing church use was permitted with CP08-013 and expanded with CP12-049. The church would continue operating Wednesdays from 8:00 P.M. to 10:00 P.M. and Sundays from 10:00 A.M. to 1:00 P.M., and requires 28 parking spaces onsite.

Wrought-iron fencing and a gate enclosing a portion of the church parking lot totaling 5,828 square feet would provide two outdoor play areas to the north of the building. A maximum of 60 children would be allowed in the outdoor play areas between the hours of 9:00 A.M. to 10:30 A.M., 2:30 P.M. to 4:00 P.M., and 4:30 P.M. to 6:00 P.M., for a total of four and a half hours.

Parking for the day care center is provided via an alternating use parking arrangement with the onsite church and includes 14 spaces located on the western side of the wrought-iron fence enclosing the play areas. The play areas would be enclosed by a wrought-iron fence and gate when the day care center is in operation. The gate would be opened when the church is in operation; a total of 28 existing parking spaces would be provided for the church use, consistent with the amount required per CP12-049.

Site parking and the pick-up/drop-off area of the day care center would be accessed via an approximately 125-foot long one-way drive aisle. Parents will drop children off Monday through Friday between 7:30 am and 9:00 am; teachers will meet kids and supervise them until they reach the building. Between 4:30 to 6:00 pm, teachers will walk children from the building to the pick-up area and supervise them until pick-up. Additionally, pick-up/drop-off will be staggered, as required by a condition of permit approval.

Project construction includes on-site circulation improvements, a modified trash enclosure, and wrought-iron fencing around a portion of the existing parking area to create two outdoor play areas.

3. **General Plan Conformance.**

*Land Use Designation*

The subject site has a land use designation in the Envision San José 2040 General Plan Land Use/Transportation Diagram of Combined Industrial/Commercial. Combined Industrial/Commercial designation allows a FAR up to 12.0 and a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses, including hospitals and private community gathering facilities. Properties with this

designation are intended for commercial, office, or industrial developments or a compatible mix of these uses.

The following General Plan policies also apply to the project:

Implementation Policy IP-1.1: Use the Envision General Plan Land Use/Transportation Diagram designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties. Implementation Policy IP-1.1- Land Use/Transportation Diagram: Use the Envision General Plan Land Use/Transportation Diagram designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties.

Implementation Policy IP-1.7: Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram, and advance Envision General Plan vision, goals and policies.

Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail as to the appropriate land uses and form of development.

Industrial Preservation Policy LU-6.2: Prohibit encroachment of incompatible uses into industrial lands, and prohibit non-industrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use compatibility issues.

Education and Services Policy ES-1.3: Encourage new schools, including public and private, to locate near populations which they serve.

Education and Services Policy ES-1.4: Encourage and enable new schools, public or private, to avoid locations that could pose health and safety risks to children (e.g., locations near industrial uses, hazardous material storage, and excessive noise).

Analysis: *The proposed CIC Combined Industrial/Commercial zoning district is a conforming district of the General Plan Land Use Designation of Combined Industrial/Commercial; the existing Light Industrial zoning district is not a conforming zoning*

*district of the land use designation. The proposed rezoning would therefore bring the zoning into conformance with the General Plan, consistent with Policy IP-1.7 and Policy IP-8.2.*

*The proposed day care center is consistent with the allowed uses of the Combined Industrial/Commercial land use designation, consistent with Policy IP-1.1. Additionally, the project would not result in restriction of existing industrial uses, consistent with Policy LU-6.2.*

*Existing land uses adjacent to the project site predominantly consist of office, open space, commercial, and industrial uses. Typical uses adjacent to the project include a tool supply store, a floral delivery service, and a hotel.*

*Although industrial uses in the project vicinity do not pose immediate health or safety risks to children, the project is within the vicinity of industrial uses that store hazardous materials onsite, including:*

- **370 West Trimble Road (Lumileds):** *This industrial office and manufacturing facility is approximately 1,000 feet from the project area. An ammonia storage facility expansion was approved in October 2005 with Planned Development Permit Amendment File No. PDA94-016-02.*
- **2500 Seaboard Avenue (Swissport Fueling):** *This airplane jet fuel farm is located approximately 850 feet from the project area and was approved in September 2007 with Site Development Permit File No. H07-012.*

*These industrial uses were permitted prior to approval of the existing church. A Hazardous Materials Risk Analysis was conducted in 2008 as part of the Conditional Use Permit (File No. CP08-013) to allow the church use, and the permit included a condition of approval requiring submittal of an emergency response plan prior to building permit issuance. The subject Conditional Use Permit for the proposed day care center is therefore also conditioned to require submittal of an emergency response plan prior to building permit issuance. The purpose of the emergency response plan is for the day care to identify emergency procedures to be followed by day care personnel in the event of an unplanned release of hazardous materials near the day care center.*

*The project would allow a day care center that could be conveniently accessed by employees of commercial and industrial businesses in the project area, thereby supporting parents working in these businesses on weekdays. Therefore, the project is consistent with Policy ES-1.3 and Policy ES-1.4.*

#### **4. Zoning Code Compliance.**

##### *Land Uses*

Pursuant to Section 20.40.100 of the San José Municipal Code, Table 20-90, day care use is permitted with a Special Use Permit in the Combined Industrial/Commercial zoning district.

The CIC Combined Industrial/Commercial zoning designation is intended for commercial or industrial uses, or a compatible mixture of these uses, that support the goals of the combined industrial/commercial general plan designation. The district allows for a broad range of commercial uses with a local or regional market, including big box retail, and a narrower range of industrial uses, primarily industrial park in nature, but including some low-intensity light industrial uses. Assembly uses and day care centers are allowed where they are compatible with and will not impose constraints on neighboring industrial uses.

### *Development Standards*

The following development standards of the Commercial/Industrial Commercial zoning district apply to the project:

#### *Setbacks*

Minimum Setback Requirements	
Front	Building: 15 feet Parking and circulation: 20 feet
Side	0 feet
Rear	0 feet

*Analysis:* The existing building is set back 15 feet from the front property line and the nearest parking space is located approximately 20 feet from the front property line. Walks and driveways for vehicular or pedestrian access to the parking lot are exempt from these setback requirements. Therefore, the project is consistent with these setback requirements.

#### *Height*

The maximum height of the zoning district is 50 feet.

*Analysis:* The existing building is 18 feet tall and is consistent with the maximum allowed height of the zoning district.

#### *Parking*

Pursuant to Section 20.90.060 of the Zoning Ordinance, the required parking ratios for day care centers are as follows:

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Required Parking Spaces for Day Care Center	
<b>Vehicle Parking</b>	1 per 6 children, up to 5 spaces and thereafter 1 per 10 children (includes employee parking)
<b>Bicycle Parking</b>	1 per 10 full-time employees and children

***Analysis:** As described in the submitted Operations Plan, a maximum of 120 children would attend the day care center, and there would be 11 employees. The day care center therefore requires a total of 14 vehicle spaces. 1 parking space per 30 square feet of worship area must be provided for the church use. As described in CP12-049, the church includes a total of 840 square feet of worship area; therefore, 28 parking spaces must be provided for the church use.*

*The subject site provides 28 vehicular parking spaces; the proposed alternating use parking arrangement is described below.*

*Additionally, 12 short-term and 2 long-term bicycle spaces are also required. Required bicycle parking spaces for the day care center are provided to the west of the existing building, approximately 10 feet from the front building entrance. No motorcycle spaces are required.*

#### **Alternating Use Parking Arrangement**

The project requires approval of alternating use parking arrangements pursuant to Section 20.90.200, which allows shared use of common parking facilities where certain uses generate parking demands during hours when the remaining uses are not in operation.

***Analysis:** The 14 required vehicle spaces would be part of the existing 28 spaces located on the western side of the wrought-iron fence enclosing the play areas to the north of the church. The existing church operates from 8:00 P.M. to 10:00 P.M. on Wednesdays and 10:00 A.M. to 1:00 P.M. on Sundays; the day care center would operate from Monday to Friday between the hours of 7:00 A.M. and 6:00 P.M. Therefore, there would be no overlap in operational hours and the 14 vehicle spaces required for the day care center may be permitted with an alternating use parking arrangement per Section 20.90.20. This arrangement would be included as a condition of approval for the Special Use Permit, and all applicable parking requirements would apply to subsequent uses of the property.*

- 5. Commercial Design Guidelines.** The project is subject to the City's Commercial Design Guidelines. Pursuant to the Commercial Design Guidelines, playground facilities should not negatively impact on-site parking and circulation, and equipment should be enclosed by

perimeter fencing. In addition, playground equipment and fencing should not obscure the primary structure along street frontages.

*Analysis: The play areas are separated from parking and circulation for the day care center by a 6-foot fence, and the alternating parking arrangement would ensure that sufficient spaces for the existing church and project day care center are provided on-site. Additionally, the fencing and play areas would not obscure the existing church structure from along the property street frontage. Therefore, the site is consistent with the Commercial Design Guidelines.*

#### **6. City Council Policy 6-14: Guidelines for Child Care**

The primary policy applicable for the review and analysis of this project is City Council Policy 6-14: Guidelines for Child Care. These guidelines were written to ensure that child care centers conform to City requirements and are compatible with surrounding neighborhoods. The criteria in the policy are intended as reference points so that there is a common understanding of the minimum design and operational expectations of preschools and child care centers in San José. Planning staff has reviewed this proposal for consistency with the relevant sections of this policy:

- a. New Child Care Centers are discouraged from locating on residential streets with limited accessibility, such as those that terminate in a cul-de-sac, in order to prevent traffic congestion and bottle-necking within the neighborhood. Access to new child care centers in order to pick up and drop off children should not negatively impact off-site traffic flow by causing on-street stacking or stopping, and new child care centers should provide adequate vehicular driveways and sufficient turn-around areas for adequate on-site circulation.

*Analysis: A Local Transportation Analysis was completed for the project by Hexagon Transportation Consultants on March 3, 2021 confirming that the project would provide sufficient space for vehicle parking, on-site circulation, and pick-up/drop-off. Parents will pick-up/drop-off students using the parking lot and an approximately 125-foot long one-way drive aisle located to the west of the existing building. The one-way drive aisle can accommodate approximately five to six vehicles; during the busiest periods, vehicles would be directed to use the parking lot. A staggered drop-off/pick-up schedule is also required as a condition of approval for this Conditional Use Permit. As identified in the approved Operations Plan, parents will be required to sign children in and out, and children would be supervised by parents or teachers until they reach the vehicle/day care center. Vehicles would exit using a curb cut directly connecting the parking area to Seaboard Avenue. The Local Transportation Analysis did not indicate that the project would result in stacking along Seaboard Avenue, and on-site circulation and parking is sufficient to allow for efficient pick-up and drop-off of students.*

- b. On-site circulation should be designed to preclude vehicles from backing onto streets designated as Major Collectors and Arterials on the City's adopted General Plan Land



Use/Transportation Diagram. Child Care Centers located in non-residential complexes should not allow drop-off and pick-up activities to interfere with the existing on-site traffic circulation.

*Analysis: As described above, the project site is accessed via a one-way drive aisle located to the west of the existing building. Seaboard Avenue is not a Major Collector or Arterial. Additionally, the project would implement a staggered pick-up schedule. The project would also be consistent with the City of San José Transportation Analysis Policy (Council Policy 5-1).*

- c. New Child Care Centers should install a minimum six-foot high fence around the active outdoor play areas for child security. The wall may be required to minimize potential impacts from outdoor play and parking areas to surrounding residential uses.

*Analysis: The day care center includes a six-foot high wrought-iron fence enclosing the two play areas located to the north of the existing building. No residential uses are located in the project vicinity.*

- d. New Child Care Centers proximate to residential neighborhoods should locate play areas away from adjacent residences as much as possible.

*Analysis: There are no residences adjacent to the project site.*

- e. New Child Care Centers are required to meet the noise standards of the Zoning Ordinance and should meet the City's noise standards as specified in the General Plan. A noise study may be required for Child Care Centers proximate to residential neighborhoods to evaluate noise levels and identify appropriate mitigation.

*Analysis: As stated above, no residential properties are in proximity of the project site. Additionally, the project would not exceed the acceptable exterior noise standards of the General Plan or zoning ordinance.*

- f. To minimize adverse impacts to adjacent residences, Child Care Centers adjacent to residential neighborhoods should operate only from 6:00 a.m. to 7:00 p.m., Monday through Friday.

*Analysis: The day care center would operate between 7:30 a.m. and 6:00 p.m., Monday through Friday. The allowed days of operation (Monday through Friday) are a condition of approval for the Special Use Permit.*

## **7. City Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design**

The purpose of City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design (Council Policy 6-34) is to protect, preserve, or restore riparian habitat and limit the creation of new impervious surface within riparian corridor setbacks to minimize flooding from urban runoff, and control erosion.

*Under Council Policy 6-34, the project is considered a “riparian project,” as it is a development located within 300 feet of a riparian corridor’s top of bank or vegetative edge, whichever is*

*greater, and pursuant to the City's Zoning Ordinance requires approval of a Development Permit. However, although the project site is within 300 feet of the Guadalupe River, the site is located within an urban infill location and is less than one acre, per Consideration 2.b. of the Policy; therefore, a reduced setback would be appropriate. The reduced setback would not adversely impact the riparian corridor and is not fundamentally incompatible with the riparian habitat. Additionally, the project would utilize the existing developed site and does not include any construction within the required 100-foot riparian setback. Further, project construction would be separated from the riparian corridor by the existing development. The nearest site activity to the Guadalupe River's riparian corridor would occur in the existing patio, which would be used as a play area by the day care center. No physical construction would occur within the 100-foot setback. Furthermore, all new construction and ground disturbance would occur on developed areas of the site. Consistent with the purpose of the Council Policy, the project would not create new impervious surfaces or uses within the required riparian setbacks.*

8. **California Environmental Quality Act.** The Planning Director approved a Categorical Exemption for the project on June 25, 2021. Under the provisions of Sections 15303(c) and 15303(e) (Class 3 – New Construction or Conversion of Small Structures) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

The project is exempt from CEQA under State CEQA Guidelines Sections 15303(c) and 15303(e). These exemptions apply to the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The project would consist of a rezoning from the LI Light Industrial zoning district to the Combined Industrial/Commercial zoning district, a Special Use Permit to allow a day care center for a maximum of 120 students in an existing building, approval of an alternating parking arrangement, and construction including on-site circulation improvements, a 10-foot wide sidewalk, a modified trash enclosure, and fencing around an existing parking area to create two outdoor play areas.

The project is in an urbanized area, and is surrounded to the west, north, and south by developed commercial and industrial uses. The Guadalupe River is located to the east of the project site; however, as discussed above, project construction would be minimal in scope and would only occur in developed areas of the site more than 100 feet from the riparian corridor, and would not result in adverse impacts to the riparian corridor. As identified in the exemption, no special circumstances exist under the provisions of CEQA Guidelines Section 15300.2 that would disqualify the project for the Class 3 Exemption, nor would there be special circumstance that would create a reasonable possibility that the project will have a significant adverse effect on the environment. Therefore, the project is exempt.

9. **Special Use Permit Findings.** Chapter 20.100 of the San José Municipal Code (SJMC) establishes required Findings for issuance of a Special Use Permit. These criteria are applied to the project based on the above-stated findings related to General Plan and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Permit.

- a. The special use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and

*Analysis: As described above, the project is consistent with the General Plan designation and policies. The site is not located within any specific plan or area development policy of the City. Although there are existing industrial uses in the project vicinity, these uses would not be restricted by the proposed day care center in that the nearest industrial facility with large amounts of hazardous materials storage is located approximately 850 feet away and is separated by three industrial buildings. Additionally, the day care center would develop an emergency response plan to ensure identification of appropriate emergency procedures before issuance of a Building Permit or Certificate of Occupancy for the day care center.*

- b. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

*Analysis: As described above, the project is consistent with the setback, height, and parking requirements of the zoning district. The existing church operates from 8:00 P.M. to 10:00 P.M. on Wednesdays and 10:00 A.M. to 1:00 P.M. on Sundays; the day care center would operate from Monday to Friday between the hours of 7:00 A.M. and 6:00 P.M. Therefore, the 14 spaces required for the day care center may be permitted with an alternating parking arrangement per Section 20.90.200. This arrangement would be included as a condition of approval for the Special Use Permit, and all subsequent uses of the property would be required to comply with the parking requirements of the zoning ordinance.*

- c. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: As described above, the project is consistent with City Council Policy 6-14: Guidelines for Child Care, in that the project would operate between 7:30 a.m. and 6:00 p.m., Monday through Friday, and all outdoor play areas would be enclosed by a 6-foot tall wrought-iron fence. Additionally, as described in the Categorical Exemption, the project was reviewed under the City's Vehicle Miles Travelled (VMT) Transportation Policy, City Council Policy 5-1 and was determined to have a less than significant impact on Traffic and Transportation.*

*As described above, the project is also consistent with City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design, as the project site is in an urban infill location where most properties are developed, and all construction would occur in already*

*developed areas at least 100 feet from the riparian corridor. Additionally, the nearest site activity to the Guadalupe River riparian corridor would be located in a play area that would be located in the existing parking lot. Further, day care uses are not identified as fundamentally incompatible with the riparian habitat.*

- d. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - iii. Be detrimental to public health, safety or general welfare; and

*Analysis: As described above, the subject site is located on a commercial site with no residential uses or other sensitive receptors in the project area. Onsite parking and circulation as well as a staggered pick-up/drop-off schedule will ensure adverse effects to traffic are minimized. Additionally, the project would not exceed the exterior noise standards of the General Plan or Zoning Ordinance. Therefore, the project would not result in significant or adverse impacts the peace, health, safety, morals or welfare of persons residing or working in the surrounding area.*

*The day care center would be located in an existing building and would not impose additional restrictions on industrial uses in the surrounding area, or otherwise impair the utility or value of property in the project area. Additionally, the project would not impair the utility or value of neighboring properties or be detrimental to public health, safety, or general welfare.*

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

*Analysis: All fencing, landscaping, circulation, and parking would be consistent with the setbacks of the zoning district, and the site is adequate in size and shape to accommodate the project. Additionally, as discussed in the Public Works Traffic Memo, dated April 14<sup>th</sup>, 2021, the project was reviewed under the City's Vehicle Miles Travelled (VMT) Transportation Policy, City Council Policy 5-1, and was determined to have a less than significant impact on traffic and transportation.*

- f. The proposed site is adequately served:
- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - ii. By other public or private service facilities as are required.

***Analysis:** The project is accessed by one inbound-only driveway and one outbound-only driveway onsite, located to the west of the existing building and accessed from Seaboard Avenue; regional vehicular access to the site is provided by U.S. Highway 101. Seaboard Avenue is a fully improved public street that is adequate to carry the vehicles anticipated to be generated by the project. The project also includes construction of a 10-foot wide sidewalk along Seaboard Avenue to improve pedestrian facilities. As discussed in the Public Works Traffic Memo, dated April 14<sup>th</sup>, 2021, with the inclusion of all project conditions, including staggered pick-up/drop-off, the anticipated traffic generated by the day care center would not result in significant impacts to transportation or transportation. Additionally, the Local Transportation Analysis, dated March 3, 2021, identified no issues related to vehicular stacking. Therefore, the project would be sufficiently served to carry the kind and quantity of the traffic that would be generated by the project.*

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

***Analysis:** As described above, the project would not have an unacceptable negative affect on adjacent property or properties with regards to noise, vibration, dust, drainage, erosion, storm water runoff, and odor. Project construction includes on-site circulation improvements, a 10-foot wide sidewalk, a modified trash enclosure, and fencing around an existing park area to create two outdoor play areas. No residential uses are in the project vicinity. Operations would occur indoors or in the two outdoor play areas, and would not exceed applicable noise standards or result in unacceptable negative effects.*

- 10. Alternating Use Parking Arrangement Findings.** In addition to any other findings required for a special use permit, the director, or planning commission on appeal, may approve such off-street parking facilities arrangements only upon making the following findings:

- a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title;

*As described above, the alternating use parking arrangement would ensure 28 parking spaces are available for the church use and 14 parking spaces are available for the day care center use during their respective times of operation. These spaces are consistent with the respective requirements of the zoning district as specified in Chapter 20.90.*

- b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and

*The alternating parking arrangement is a condition of permit approval for this project, and would continue to be provided and maintained onsite during the life of the day care center use.*



- c. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

*Provided parking spaces are located onsite, directly adjacent to the existing building.*

In accordance with the findings set forth above, a Special Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use permitted hereby.

## **CONDITIONS**

- 1) **Acceptance of Permit.** Pursuant to Section 20.100.290(B) of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Special Use Permit (sometimes referred to as "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
  - a) Acceptance of the Special Use Permit by the permittee; and
  - b) Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
- 2) **Permit Expiration.** This Special Use Permit shall automatically expire four years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Special Use Permit. The date of issuance is the date this Special Use Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Special Use Permit.
- 3) **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Special Use Permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.



- 4) **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the permittee's intent to fully comply with said conditions.
- 5) **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
- 6) **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "Sunny Daycare T.I. and CUP", dated April 23, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
- 7) **Use Authorization.** Subject to all conditions herein, this Permit allows a child care use for a maximum of 120 children ages 0 to 5 years old.
  - a) **Operational Hours.** The day care center use shall be limited to operation from Monday through Friday between 6:30 am and 7:00 pm, unless a Permit, as applicable, is approved by the City for other hours of operation. The existing church use shall only operate when the day care center is not in operation.
  - b) **Outdoor Play Areas.** The use of the outdoor play areas shall be limited to a maximum of 60 children at any one time, and for up to four and a half hours a day.
- 8) **Hazardous Materials Emergency Response Plan.** The child care use is located in an area with Combined Industrial/Commercial General Plan land use designations, industrial zoning designations, and existing industrial uses with hazardous materials storage. Prior to the issuance of any Building Permit or a Certificate of Occupancy for the day care use, the permittee shall submit an Emergency Response Plan to the Planning Division for review and

approval. The purpose of the Emergency Response Plan is to outline the emergency procedures that shall be followed by child care personnel in the event of an unplanned release of hazardous materials near the child care use.

- 9) **Noise Control.** Maximum noise levels emanating from the use shall not exceed 60 decibels (dBA) adjacent to a property used or zoned for commercial purposes and shall not exceed 70 decibels (dBA) adjacent to a property used or zoned for industrial or use other than commercial or residential purposes.
- 10) **Alternative Parking Arrangement.** The day care center is only allowed to operate Monday through Friday between 6:30 am and 7:00 pm, and the existing church may only operate when the day care center is not in operation.
- 11) **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
- 12) **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
- 13) **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
- 14) **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
- 15) **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
- 16) **Outdoor Storage.** No outdoor storage is allowed or permitted with this Special Use Permit.
- 17) **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
- 18) **Landscaping.** Planting and irrigation are to be provided by the permittee, as indicated, on the final Approved Plans.
- 19) **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires

the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

- 20) **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
- 21) **Affordable Housing Financing Plans.** The San José City Council ("City") approved the Envision San José General Plan 2040 ("General Plan") in 2011. The General Plan provides the framework for development located in San José.

The City has adopted a Commercial Linkage Fee Ordinance (San José Municipal Code Chapter 5.10) and Resolution, which may apply to this project. The City is also in the process of developing financing plans to help fund affordable housing and related amenities and services. Other financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); and/or (v) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit, including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

- 22) **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- Construction Plans.* This permit file number, SP21-021 shall be printed on all construction plans submitted to the Building Division.
  - Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

e. *Other.* Such other requirements as may be specified by the Chief Building Official.

23) **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the 2016 California Fire Code and the fire alarm system must be included as follows.

a) **Fire Alarm System.** Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2.3 and EVAC (emergency voice/alarm communication) system.

24) **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.

a) **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.

b) **Transportation:**

i. A Local Transportation Analysis (LTA) has been performed for this project based on a net 83 AM and 84 PM peak hour trips. See separate Local Transportation Analysis Memo dated April 14, 2021 for additional information. The following conditions shall be implemented:

- (1) Construct one (1) inbound-only, 11-foot wide driveway along Seaboard Avenue.
- (2) Provide signage permitting inbound access only to trash and emergency vehicles near the existing two-way driveway along Seaboard Avenue.
- (3) Implement a staggered pick-up schedule to improve vehicle access to the inbound-only driveway along Seaboard Avenue.

c) **Grading/Geology:**

i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.

d) **Stormwater Runoff Pollution Control Measures:** This project may need to comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source controls to minimize stormwater pollutant discharges.

- e) **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f) **Flood: Zone X:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.
- g) **Sewage Fees:** In accordance with City Ordinance, all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- h) **Undergrounding:** ~~The project is not subject to paying the In-Lieu Undergrounding Fee because there are no existing overhead utilities along Seaboard Avenue. The In-Lieu Undergrounding Fee shall be paid to the City for the Seaboard Avenue frontage prior to issuance of a Public Works Clearance. Ten percent of the base fee in place at the time of payment will be due. Currently, the 2021 base fee is \$532 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.~~  
  
~~The Director of Public Works may, at his discretion, allow the permittee to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Union Avenue. Permittee shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.~~
  - i) **Street Improvements:**
    - i. Relocate fence along property frontage outside of the public right-of-way.
    - ii. Construct 10-foot wide City Standard attached sidewalk with 4-foot by 5-foot tree wells spaced 35 feet on center along Seaboard Avenue project frontage.
    - iii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
    - iv. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
    - v. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - j) **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of

curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.

k) **Referrals:** This project should be referred to the County of Santa Clara.

25)**Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.

26)**Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.

27)**Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris:

a) Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.

b) Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.

28)**Lighting.** No new on-site lighting is approved through issuance of this Permit.

29)**Sign Approval.** No signs are approved as part of this permit. All signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.

30)**Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

a) A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation;

b) A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

c) The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby **approved**.

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**EFFECTIVE DATE**

The effective date of this Permit (File No. SP21-021) shall be the effective date of the Conforming Rezoning Ordinance for File No. C20-002, approved for publication on \_\_\_\_\_, 2021 (the "Conforming Rezoning Ordinance") and shall be no earlier than the effective date of said Conforming Rezoning Ordinance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

EXHIBIT 'A'  
LEGAL DESCRIPTION

All that certain parcel of land situate in the City of San Jose, County of Santa Clara County, State of California, more particularly described as follows:

Being all of Parcel 10, as shown on the Parcel Map filed on August 13, 1973 in Book 328 of Maps at Page 24, Santa Clara County records, more particularly described as follows:

**BEGINNING** at the most westerly corner of said Parcel 10; thence along the northwesterly line of said Parcel 10, North 65° 25' 26" East, 220.44 feet to the most northerly corner of said Parcel 10, said point being the beginning of a non-tangent curve, concave northeasterly, having a radius of 1,150.00 feet, from which the radius point bears North 69° 30' 42" East; thence leaving said northwesterly line, along the northeasterly line of said Parcel 10, southeasterly, along said curve, through a central angle of 08° 55' 39", for an arc length of 179.19 feet to the most easterly corner of said Parcel 10; thence leaving said northeasterly line, along the southeasterly line of said Parcel 10, South 65° 25' 26" West, 171.59 feet to the most southerly corner of said Parcel 10, said point being the beginning of a non-tangent curve, concave southwesterly, having a radius of 592.00 feet, from which the radius point bears South 57° 35' 34" West; thence leaving said southeasterly line, along the southwesterly line of said Parcel 10, the following two (2) courses: 1) northwesterly, along said curve, through a central angle of 11° 21' 39", for an arc length of 117.38 feet and 2) North 43° 46' 05" West, 68.88 feet to the **POINT OF BEGINNING**.

Containing an area of 0.78 acres of land, more or less.

END OF DESCRIPTION

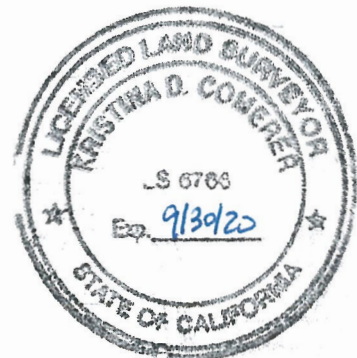
This description is based upon the dimensions shown for Parcel 10 as shown on the Parcel Map filed on August 13, 1973 in Book 328 of Maps at Page 24, Santa Clara County records.

Kristina D. Comer

Kristina D. Comerer, PLS 6766

Sept. 2, 2020

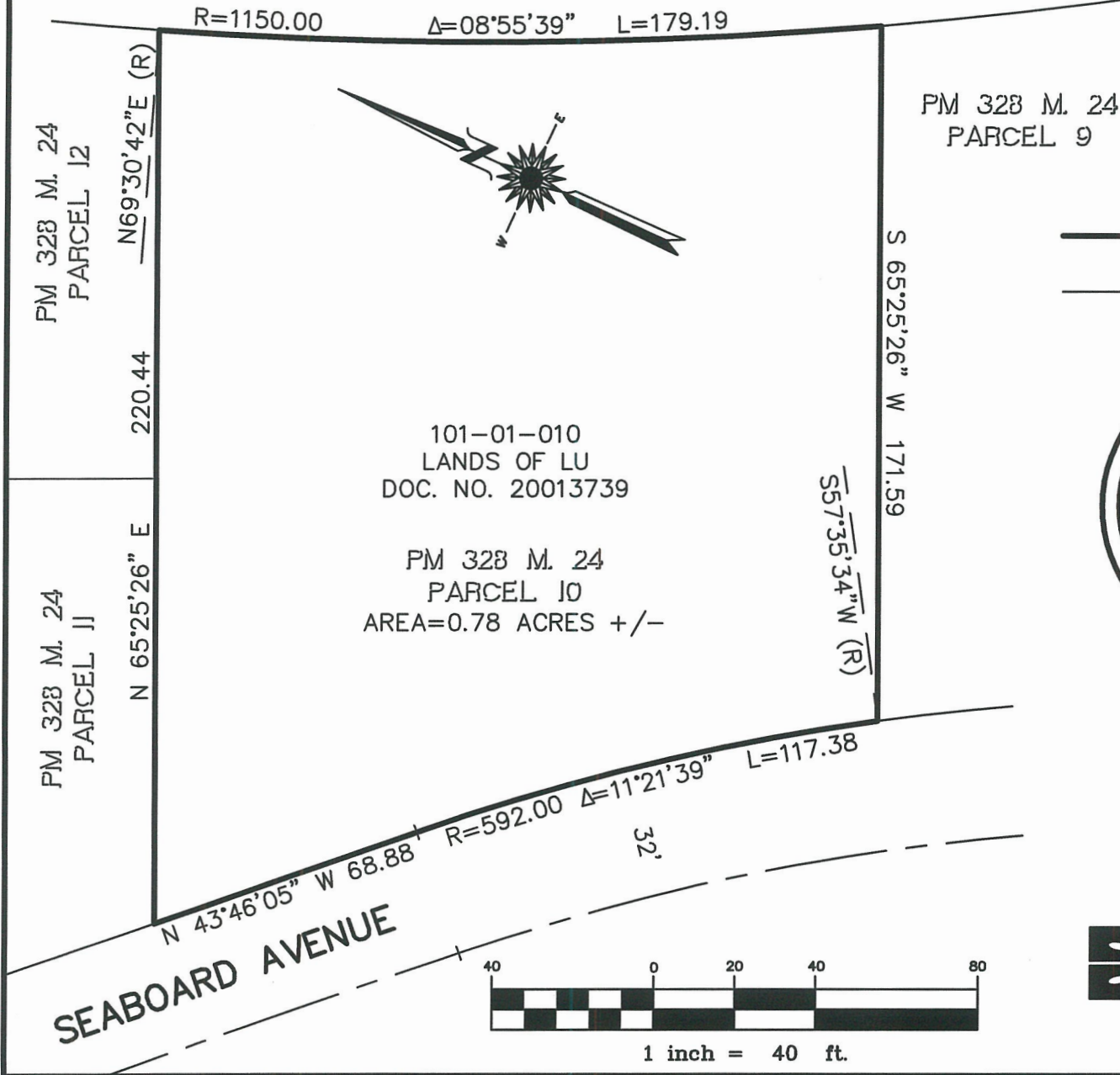
Date:



EXISTING ZONING: LIGHT INDUSTRIAL  
PROPOSED ZONING: COMBINED INDUSTRIAL COMMERCIAL

## GUADALUPE RIVER

**EXHIBIT 'B'**  
**BOUNDARY PLAT**  
**APN 101-01-010**  
**2586 SEABOARD AVENUE**  
**SAN JOSE, CALIFORNIA**  
SCALE: 1" = 40'



### LEGEND

————— EXISTING BOUNDARY LINE  
- - - - - STREET CENTER LINE



*Kristina D. Comerer*  
KRISTINA D. COMERER, PLS 6766  
DATE: *Sept. 2, 2020*

**CROSS LAND SURVEYING, INC.**  
**2210 MT. PLEASANT ROAD**  
**SAN JOSE, CA 95148**  
**(408) 274-7994**  
PROJECT NO. 19-175