



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 6, 2014

Agenda Item 6D
Approvals:
City Manager jm
Dept. Head ADA
Attorney SD
Finance JV

Department: Community Development
Prepared By: James Holloway, Community Development Director

Subject: **APPROVAL OF A LAND LEASE BETWEEN GRATITUDE GARDEN PRESCHOOL AND THE CITY OF SAN CLEMENTE.**

Fiscal Impact: \$1,200 revenue per year to the City.

Summary: The Planning Commission approved a Conditional Use Permit (CUP) for a new preschool located at 92 Avenida La Pata with a playground located on an adjacent portion of City-owned property, at their September 17 Public Hearing. Conditions of approval require that the Gratitude Garden Preschool enter into an agreement to lease a portion of the City-owned land.

Staff recommends that Council approve a land lease for the Gratitude Garden Preschool to use a 2,833 square foot portion of a 3.7 acre City-owned parcel located to the north of 92 Avenida La Pata.

Background: The City-owned parcel is a strip of unimproved, vacant land located on the east side of Avenida La Pata, between 92 Avenida La Pata and Avenida Vista Hermosa. The portion of the parcel proposed for the lease is located directly behind an existing commercial building at 92 Avenida La Pata (as shown in the photo below), which will house the preschool classrooms.



This portion of the City-owned lot has development restrictions due to an easement for an underground storm drain, and because it serves as an Orange County Fire Authority fuel modification zone for the commercial building. The proposed playground will consist of new landscaping, small accessory structures, and fencing, which comply with the requirements of the easement and the fuel modification zone.

Discussion: The Centennial General Plan states that, *“We allow for the continuation of existing and development of new child and adult day-care facilities in any land use zone where they are compatible with adjacent uses”* (Policy LU 6.04). The site for the preschool playground is surrounded by natural open space, with the closest business located in the Plaza Pacifica and Courtyards at Talega shopping centers located to the south along Avenida La Pata. The land proposed for the preschool playground is of very little value for any substantial development due to the easement. Additionally, this area is already tied to the commercial building as it serves as its fuel modification zone. A map showing this property is provided below.

Map of Land Lease Area



The City Council has approved leases for other commercial projects. The most relevant example would be for the OC Tavern to use 40 of the Municipal Golf course’s parking spaces. The 40 parking spaces represent an area of approximately 12,000 square feet. The lease amount for the use of that land is \$300 per month. The proposed lease is for less than 25% of the area leased to the OC Tavern.

The terms of the proposed lease are that the Gratitude Garden Preschool would pay the City \$100 per month for the use of 2,833 square feet of land. This lease would be for a term of 15 years, with two successive options for terms of five years each to match the applicants lease for the building at 92 Avenida La Pata.

Recommended

Action: STAFF RECOMMENDS THAT the City Council authorize the Mayor to sign the land lease between the Gratitude Garden Preschool and the City of San Clemente.

Attachments: 1. Land Lease 2. Planning Commission Report

Notification: Gratitude Garden Preschool

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Clemente
100 Ave. Presidio
San Clemente CA 92672
Attn: James Holloway

Space above this line for Recorder's use only

LAND LEASE AGREEMENT

THIS LAND LEASE AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2014 by and between the CITY OF SAN CLEMENTE, a California Municipal corporation ("City"), and ROSE SOCAL, LLC, a California Limited Liability Corporation ("Gratitude Garden Preschool") (with the City and Preschool sometimes hereinafter being individually referred to as a "Party" and collectively, the "Parties").

R E C I T A L S

A. Gratitude Garden Preschool is the tenant of certain real property located at 92 Avenida La Pata, in the City of San Clemente, County of Orange, California (the "Preschool Property"), Assessor's Parcel Number 688-132-02. Gratitude Garden Preschool's operations include the use of the Preschool Property as a preschool ("Preschool Facility"). The Preschool Property is improved with a commercial building and 14 on-site parking spaces.

B. City is the fee owner of certain real property located adjacent to the Preschool Property to the north, more particularly described in Exhibit "A" attached hereto (the "City Land"). The City Land is a 2,833 square foot portion of an unimproved, 3.7 acre parcel ("City Parcel").

C. On September 17, 2014, the Planning Commission of the City of San Clemente adopted Resolution No. PC 14-038 approving Conditional Use Permit No. 14-266 and Minor Architectural Permit No. 14-267 to establish the Preschool Facility on the Preschool Property and a playground for the Preschool Facility on the City Land.

D. The Parties hereto desire to enter into this Agreement for the purpose of providing Gratitude Garden Preschool an exclusive lease for the use of the City Land for the playground for the preschool pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, incorporating the foregoing recitals and in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Lease. During the Term (as defined and described in Sections 2 and 3 below) of the is Agreement, the City hereby grants to Gratitude Garden Preschool an exclusive

lease upon and over the City Land solely for the purpose of providing a playground for the Preschool Facility in accordance with and subject to terms and conditions of this Agreement. The lease to use the City Land for the purposes of providing a playground for the Preschool Facility shall be referred to herein as the "Lease."

2. Term. Subject to Section 3 of this Agreement, the initial term of the Land Lease shall commence upon the date it is signed by all Parties, and shall continue thereafter until December 31, 2029. Subject to Section 3 of this Agreement, Gratitude Garden Preschool shall have the right to extend the initial term of the Lease for two successive terms of five (5) years each. Each option shall be deemed to have been exercised (and the term of the Lease so extended) unless Gratitude Garden Preschool delivers a written notice to City at least thirty (30) days prior to the end of the then-current term of its intent to not extend the Lease. The initial term of the Lease as extended pursuant to such options (and subject to Section 3) is referred to herein as the "Term."

3. Termination. Notwithstanding Section 2, the Term of the Lease and this Agreement shall automatically terminate if Gratitude Garden Preschool does not maintain in effect a valid conditional use permit or other legally required permit or permits to operate the preschool facility or if Gratitude Garden Preschool discontinues operation of the Preschool Facility for a period of six (6) consecutive months. In addition, and notwithstanding Section 2, this Agreement and the Lease may be terminated as follows: (i) Gratitude Garden Preschool may terminate the Lease ninety (90) days after it delivers written notice to City of its intent to terminate, provided that Gratitude Garden Preschool is terminating operation of the Preschool Facility as well and that the City Land has been completely restored to the condition it was in immediately preceding the commencement of the Lease; (ii) the City Council of City has the right by a majority vote of its membership that is eligible and qualified to vote on the issue to terminate the Lease and this Agreement for any reason one hundred (180) days after it delivers written notice to Gratitude Garden Preschool of its intent to terminate; and (iii) either Party may terminate the Lease and this Agreement and any and all rights or obligations that exist hereunder if a court of law finds that the Lease and/or this Agreement is not valid and enforceable. The Parties agree that in the event the Lease and this Agreement are terminated pursuant to this Section, Gratitude Garden Preschool shall be responsible for, along with all costs associated with, restoring the City Land to the condition it was in immediately preceding the commencement of the Lease to the satisfaction of the City. Notwithstanding Section 6, the Parties further agree that in the event the Lease and this Agreement are terminated pursuant to this Section, neither Party shall have any further rights or liabilities to the other with respect to the period of time after the effective date of the termination.

4. Lease Payment. Total lease amount shall be \$1,200 per annum, payable in two biannual payments of Six Hundred Dollars (\$600) each. Gratitude Garden Preschool shall remit to the City two (2) initial biannual lease payments of Six Hundred Dollars (\$600) each, or prorated portion thereof (with payments for partial biannual periods prorated based on the number of days in said period included in the Term), for the period between the Commencement Date and June 30, 2015. Commencing July 1, 2015, and on each anniversary of that date, the Lease Payment shall be increased by 3%, rounded to the nearest whole dollar. Each Lease Payment shall be paid in advance, on the Commencement Date (as to the first Lease Payment) and thereafter on the 1st day of every month of July and January during the Term (with payments

for partial biannual periods prorated based on the number of days in said period included in the Term). Payments shall be made in U.S. dollars. Checks or money orders shall be made out to the "City of San Clemente."

If any Lease Payment or any other sum due the City is not received by City within ten (10) days after the date it is due, Gratitude Garden Preschool shall be deemed delinquent in its Lease Payment and a late charge of one and one-half percent (1.5%) of the delinquent amount, plus the sum of Fifty Dollars (\$50.00), shall become immediately due and payable to City. An additional charge of one and one-half percent (1.5%) of such delinquent Lease Payment (excluding late charges) shall be added for each additional calendar month (or portion thereof) that the delinquent sum remains unpaid. The Parties hereby acknowledge and agree that such late charges do not represent and shall not be deemed to be an interest payment, but that such late charges represent a fair and reasonable estimate of the costs and expenses that City will incur by reason of Gratitude Garden Preschool's late payment. City's acceptance of any delinquent Lease Payment or late charge shall in no way constitute a waiver of Gratitude Garden Preschool's default with respect to such overdue and delinquent payment, or in any way impair, prevent, or restrict City from exercising any of its rights or remedies set forth in this Agreement or otherwise provided at law.

In the event that the Lease is terminated, pursuant to Section 3, the Gratitude Garden Preschool may request in writing a refund for any portion of a Lease Payment that applies to a period of time after the effective date of the termination of the Lease. This written request must be received by the City within three (3) years of the termination of the Lease. Once this written request for a refund is received, the City shall provide Gratitude Garden Preschool with a prorated refund, based on the number of days in said period included in the Term, within ninety (90) days.

5. Insurance. Gratitude Garden Preschool shall maintain and provide to City evidence of liability insurance naming City as an additional insured against liability arising out of Preschool's use of the City Land and/or Lease, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage combined. This liability insurance shall include the following coverage features: Comprehensive General Liability, Abuse and Molestation Coverage, Blanket Property Limits with In-House Capacity, Umbrella and Excess Limits, Professional Liability, and Directors and Officers Liability. In addition, all such insurance:

- a) shall be primary insurance and not contributory with any other insurance City or any City official, employee, or agent may have;
- b) shall contain no special limitations on the scope of protection afforded to City and City officials, employees, and agents;
- c) shall be "date of occurrence" and not "claims made" insurance;
- d) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

- e) shall provide that the policy shall not be cancelled by the insurer or Gratitude Garden Preschool unless there is a minimum of thirty (30) days prior written notice to City;
- f) shall be endorsed to include a waiver of subrogation rights against City and City's officials, employees, and agents; and
- g) shall not require Gratitude Garden Preschool to meet a deductible or self-insured retention amount of more than Ten Thousand Dollars (\$10,000) unless approved in writing by City in its reasonable discretion.

6. Indemnity. Gratitude Garden Preschool hereby agrees to indemnify, defend, and hold free and harmless City and City's officers, employees, agents, and representatives (collectively, the "City Parties") and each of them, jointly and severally, against and from any and all claims, demands, causes of action, damages, costs, expenses, losses, and liabilities, at law and in equity, of every kind or nature whatsoever, including reasonable attorneys' fees and expert witness fees, including, without limitation, injury to or death of any person or persons and damage to or destruction of any property, threatened, brought, or instituted, arising out of, or in any manner directly or indirectly connected with the entry upon, or the engagement of any activities on, the City Land by any Gratitude Garden Preschool employees, faculty, students, invitees, or guests, including, without limitation:

- a) any damage to the City Land and any liability to any third party incurred by reason of any acts or omissions, or any commission of any negligent or tortious acts by Gratitude Garden Preschool employees, faculty, students, invitees, or guests in connection with the activities permitted or required by this Agreement.
- b) any mechanics' or materialmen's liens, claims, demands, actions or suits arising (directly or indirectly) from (i) the performance of the activities permitted or required by this Agreement, or (ii) the activities of Gratitude Garden Preschool employees, faculty, students, invitees, and guests on or relating to the City Land (including, without limitation, any claims by any such employees, faculty, students, invitees, or guests); and
- c) any costs of removing Gratitude Garden Preschool property or the property of any of its employees, faculty, students, invitees, or guests from the City Land after the last to expire of the Term or the earlier termination of this Agreement.

Gratitude Garden Preschool, at their cost, shall defend the City with attorneys approved by the City. The foregoing obligations shall not apply to claims, liabilities, or losses arising out of the sole active negligence or willful misconduct of City. The foregoing obligations shall survive the termination of the Lease.

7. Maintenance. Gratitude Garden Preschool, at its sole cost and expense, shall maintain the City Land in a safe and clean condition, and shall be responsible for any damage committed to the City land by Gratitude Garden Preschool employees and invitees. Such

maintenance shall include removing all trash and debris from the City land, maintaining all required landscaping as approved in the conditional use permit and minor architectural permit. Preschool shall be responsible for all maintenance of the City Land, including landscape irrigation and playground equipment maintenance, reasonably determined to be necessary by City.

8. City's Reservations. City reserves physical and legal control over the City Land. As part of that control, the City reserves the right to temporarily take possession of the City Land for any purpose, including maintenance, or repair, of any City facilities on or abutting the City Land. In the event that City must excavate or grade all or part of the City Land to make repairs to underground City facilities, the City shall restore the ground to as similar a grade as existed prior to the excavation or grading as possible. However, the City shall not be responsible for replacing any Gratitude Garden Preschool property, including, but not limited to, any structures, equipment, fences, walkways, lighting and electrical conduits, landscaping, and irrigation systems.

9. Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assigns of the respective Parties hereto.

10. Authority. Each person executing this Agreement on behalf of a Party represents and warrants to the other Party that he or she has the authority to execute this Agreement on behalf of its principal.

11. Attorneys' Fees. In the event of any dispute, action or proceeding between the Parties hereto in any way pertaining to this Agreement or the agreements provided for herein, the prevailing party or parties shall be entitled to recover from the other party or parties all expenses, fees and costs of such matter, including without limitation, reasonable attorneys' fees and any costs of appeal, investigation, preparation and professional or expert consultant or testimony in connection with such dispute, action or proceeding.

12. Notices. All notices, documents, correspondence, and communications concerning this Agreement shall be addressed as set forth in this clause, or as the parties may hereafter designate by written notice, and shall be personally delivered or sent through the United States mail, first class, postage prepaid. Any mailed notice shall be deemed served or delivered forty-eight (48) hours after mailing. Either Party may change the address for notices by giving the other Party at least ten (10) calendar days prior written notice of the new address.

Notwithstanding the above, either party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery or facsimile and, so given, shall be deemed to have been given upon receipt.

To Gratitude Garden Preschool:

Gratitude Garden Preschool
92 Avenida La Pata
San Clemente, CA 92673
Attention: Chris Kuczynski

To City:

City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672
Attention: City Manager

13. Governing Laws. This Agreement shall be construed in accordance with the laws of the State of California.

14. Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed, when taken together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

15. Severability. If any term, provision of condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable), except those terms, provisions or conditions which are made subject to or conditions upon such invalid or unenforceable terms, provisions or conditions, shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Modifications. This Agreement and the Lease granted hereunder may not be amended or otherwise modified, except by an agreement in writing signed by the parties hereto. No such amendments or modifications shall have any force or effect whatsoever unless and until they are written and executed in such a manner.

17. Running With The Land. The Lease, and all burdens and benefits created thereby shall be appurtenant to and shall run with the property of the City Land. Upon recordation of this Agreement, every person or entity that now or hereafter owns or acquires any right, title or interest in or to all or any portion of the Gratitude Garden Preschool shall be conclusively deemed to have consented and agreed to every provision of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired such interest.

IN WITNESS WHEREOF, the Parties have executed this Land Lease Agreement as of the date first written above.

By: _____

Its: _____

City of San Clemente

Exhibit "A"

LEGAL DESCRIPTION OF THE CITY LAND





STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: September 17, 2014

PLANNER: Adam Atamian, Associate Planner

SUBJECT: Conditional Use Permit 14-266/ Minor Architectural Permit 14-267, Gratitude Garden Preschool, a request to consider a new preschool located at 92 Avenida La Pata in the Neighborhood Commercial zone of the Rancho San Clemente Specific Plan with a playground located on an adjacent 2,883 square foot portion of City-owned property zoned Open Space in the Forster Ranch Specific Plan.

REQUIRED FINDINGS

Prior to approval of the proposed project, the following findings shall be made. The draft Resolution, provided as Attachment 1, and analysis section of this report provide an assessment of the project's compliance with these findings.

Conditional Use Permit, Section 17.16.060, to allow a preschool use in the Neighborhood Commercial zone of the Rancho San Clemente Specific Plan, and to allow a playground in the Sector P Open Space zone of the Forster Ranch Specific Plan.

- a. The proposed use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all the applicable provisions of this title, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed.
- b. The site is suitable for the type and intensity of use that is proposed.
- c. The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity.
- d. The proposed use will not negatively impact surrounding land uses.

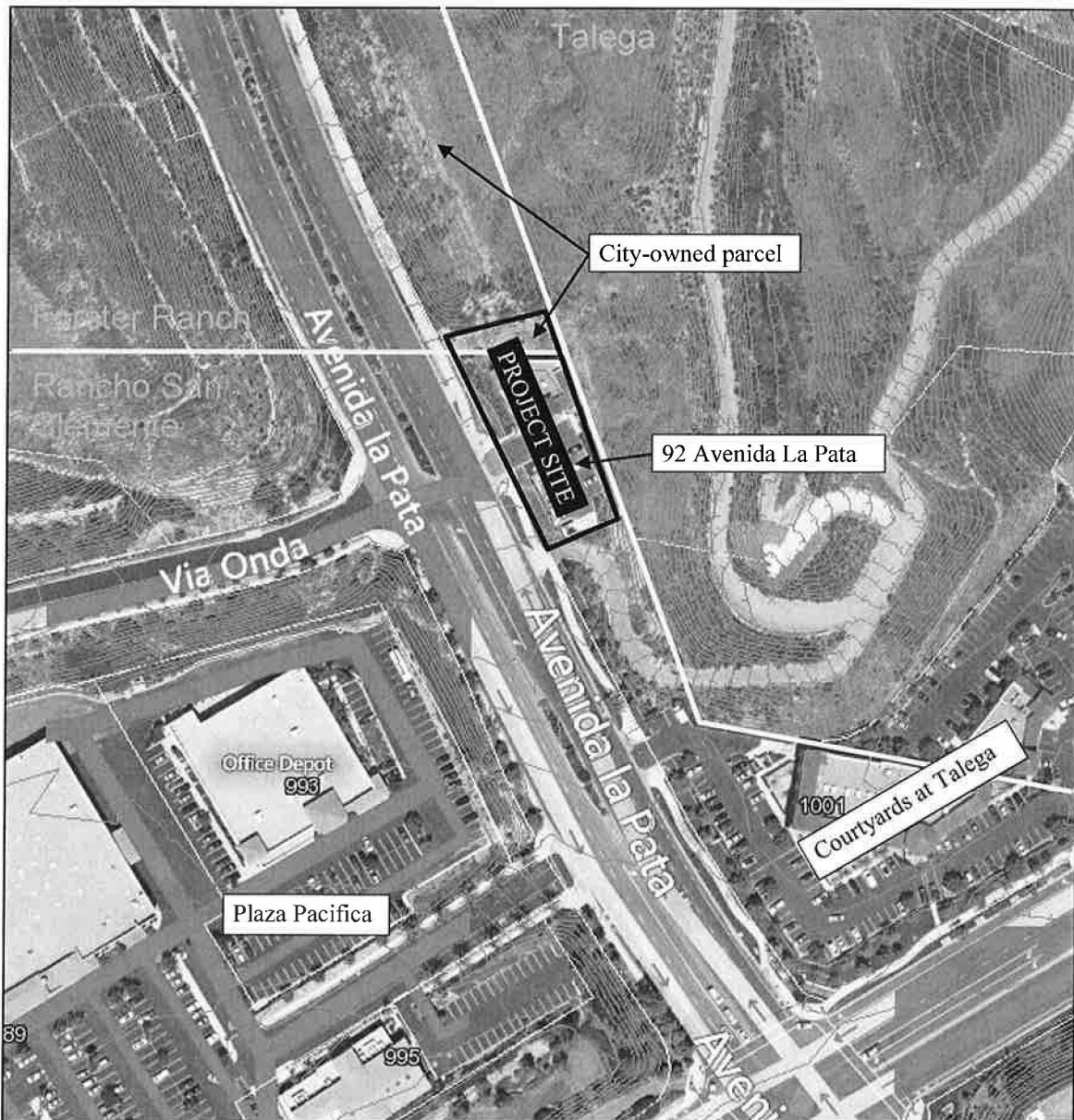
Minor Architectural Permit (MAP), Section 17.16.100, to allow exterior site modifications.

- a. The architectural treatment of the project complies with the San Clemente General Plan.
- b. The architectural treatment of the project complies with the Rancho San Clemente Specific Plan in areas including, but not limited to, height, setback, color, etc.
- c. The architectural treatment of the project complies with the architectural guidelines in the City's Design Guidelines.
- d. The general appearance of the proposal is in keeping with the character of the neighborhood.

- e. The proposal is not detrimental to the orderly and harmonious development of the City.

BACKGROUND

The project site is located on two lots. The first portion of the project is an 18,008 square foot lot located at 92 Avenida La Pata within the Neighborhood Commercial portion of the Rancho San Clemente Specific Plan. This lot is developed with a 3,700 square foot commercial building and 14 space parking lot. The second part of the project site is a 2,883 square foot portion of a 161,856 square foot City-owned lot directly north of 92 Avenida La Pata, which is located within the Open Space portion of the Forster Ranch Specific Plan. The proposed playground is located on both lots, as shown on the map below.



Adjacent properties consist of the Courtyards at Talega shopping center to the south, Plaza Pacifica shopping center to the southwest, Forster Ranch Specific Plan Open Space to the west and north, and Talega Specific Plan Open Space to the east.

Development Management Team Meeting

The City's Development Management Team (DMT) and Executive Development Management Team (ExDMT) reviewed the project multiple times. The applicants modified the proposal on numerous occasions to comply with the requirements and concerns of the Engineering, Building, and Planning divisions, and the Orange County Fire Authority (OCFA).

The DMT and ExDMT support the request as proposed, subject to the attached conditions of approval.

Noticing

Public notification was completed in accordance with State Law and Municipal Code regulations. Staff has not received input from the public on this request at the time this report was prepared.

PROJECT DESCRIPTION

The applicant proposes to establish a new preschool in an existing commercial structure previously occupied by a real estate office. The project involves the installation of a new playground area partially located on an adjacent City-owned parcel. A condition of approval requires the execution of a lease agreement for the use of the City-owned property. Site improvements include a new playground area consisting of small accessory structures made of natural materials, decomposed granite paths, new perimeter fencing, and new landscaping. No exterior modifications are proposed to the building.

The preschool proposes a maximum occupancy of 48 students and 6 employees. Additionally, state licensing requirements limit the total daily enrollment to be no more than 48 children. The preschool will be separated into two rooms and provide drop-in classes for children between the ages of three and five years old, Monday through Friday from 7:00 AM to 5:30 PM.

Development Standards

Table 1, below, outlines the Rancho San Clemente Specific Plan's Neighborhood Commercial development standards.

Table 1 - Development Standards

Standard	Code Requirements	Proposed Site Plan	Complies with Code Requirements
Building Height (Maximum)	35 feet, not to exceed 2 stories	23 feet, 1 story, No Change	Yes
Setbacks (Minimum): <ul style="list-style-type: none"> • Front • Others 	30 feet for bldgs. ≤ 20 feet tall 50 feet for bldgs. > 20 feet tall Determined through original Site Plan Permit review	30 feet approved with CUP, No Change 10 feet, No Change	Yes Yes
Floor Area Ratio (Maximum):	.35	.17, No Change	Yes
Required Parking (Minimum):	13 (1 per 2/employees, and 1 per 5/children)	14	Yes
Landscaping Req. (Minimum): <ul style="list-style-type: none"> • Boundary Landscaping: • Parking lot landscaping: • Street Trees 	1 Tree/ 30 lineal feet 3 Trees 1 Tree/ 25 lineal feet	1 tree/ 29.25 feet 11 Trees 1 Tree/ 24 feet	Yes Yes Yes
Landscape Buffer Yards	20 feet avg. at street frontage, 6 feet for other property lines	30 feet at street, 10 feet others	Yes

Table 2, below, outlines the Forster Ranch Specific Plan’s Open Space development standards that apply to the portion of the project located on the City-owned property.

Table 2 - Development Standards

Standard	Code Requirements	Proposed Site Plan	Complies with Code Requirements
Accessory Structure Height (Maximum)	23 feet, same as primary building	10 feet, 8 inches	Yes
Setbacks (Minimum):	20 feet	27 feet	Yes
• Front			
• Others	Determined through discretionary review	0 to 4 feet	Staff supports proposed setbacks.
Required Parking (Minimum):	No additional parking required	0	Yes
Landscaping Req. (Minimum):			
• Boundary Landscaping:	1 Tree/ 30 lineal feet	0	No, City storm drain easement prevents planting any additional trees.
• Street Trees	1 Tree/ 25 lineal feet	0	No, City storm drain easement prevents planting any additional trees.
Landscape Buffer Yards	20 feet avg. at street frontage	20 feet	Yes

Architecture

The building is a Spanish-style commercial structure. The architecture was reviewed and supported by the Design Review Subcommittee in September, 2001. The building includes Spanish elements such as red tile roof, white stucco walls, and black metal details combined with contemporary commercial elements such as large, multi-paned glass windows and stone veneered base cladding. This project does not propose any exterior modifications to the building, however all new accessory structures and fencing are designed to be compatible with the approved architectural style. Views of most of the proposed accessory structures will be obscured from Avenida La Pata by the landscaping proposed along the fence. Approximately the top four feet of the gazebo and the top foot of the arbor will be visible from the public right-of-way.

Site Design

This project does not propose any major site modifications to the approved plans. The project only proposes to replace landscaping. The preschool will use the existing parking lot in its current configuration.

The project proposes multiple minor modifications to the portion of the City-owned lot where the playground will be located. The proposed playground area is part of a fuel modification zone required by the OCFA for the commercial building. This area also has a 26 foot-wide City easement for an underground storm drain. Because of these restrictions, the applicant is not permitted to significantly alter the land. The OCFA will not permit any major structures or potentially flammable landscaping, and the City's Engineering division will not permit any significant grading or trees on the easement. Working within the limitations, the applicant proposes the following playground features (landscaping is discussed in the landscaping section):

- The installation of decomposed granite (DG) paths directly over the existing grass. The DG would be compacted and a hardener applied to create a firm walking surface so that the majority of the playground area is accessible to all users.
- The installation of new playground equipment. These small accessory structures include a ten foot, eight inch tall black metal gazebo, a seven foot tall brushed iron garden arbor, and multiple playground items less than four and a half feet tall such as a garden area, log stumps, a rowboat, a short climbing wall, and art easels. Images of these structures are provided on Sheet L-6 of the plans.
- The installation of dark bronze tubular steel fencing. The fencing will match the five foot six inch tall fencing on site, extending it around the perimeter of the playground and connecting to the west corner of the building.
- The installation of low-voltage pathway and landscape lighting.

Traffic/Parking

The proposed preschool has a maximum occupancy of 48 students and 6 employees at any time. The parking requirement for preschools is one space for every five students and one space for every two employees. The parking requirement for the proposed use is 13 parking spaces. The site includes a parking lot which provides 14 parking spaces, leaving a surplus of one parking space.

The parking lot has a single access for entrance and exits. Access is only available by turning right into the site from Avenida La Pata, and turning right onto Avenida La Pata to exit.

The site is not anticipated to generate significant parking for most of the day. Preschool children cannot be dropped off similar to other schools. All parents must park, walk their children into the school, and sign them into a daily enrollment log. The pick-up and drop-off times in the morning and late afternoon are expected to be the busiest times. The applicant proposes to alleviate parking lot congestion and avoid incoming traffic lining up on Avenida La Pata by providing a morning drop-off period between 7:00 AM and 9:30 AM, and two pick-up times. The applicant expects that approximately half of the children will be picked-up before the 1:00 PM nap time, and the other half picked-up between 3:00 PM and 5:30 PM. These extended drop-off and pick-up times will eliminate traffic congestion that can occur in schools that have one drop-off and pick-up time which occur within a short period of time.

Landscaping

The applicant proposes new landscaping in three areas. The first area is in the playground which consists of planting three trees: a California Sycamore, a Jacaranda, and an African Sumac. The existing plants, such as the bird of paradise, will be removed to make room for the playground.

The second area of landscaping is on the street side of the proposed fencing outside the playground area. This landscaping consists of tall shrubs such as Bush Anemone, Wild Lilac, and Orchid Rockrose, the perennial Red Yucca, and Deer Grass. These plants were selected for their low-water consumption, fire-resistant qualities, and their mature height to help screen views of the playground area from Avenida La Pata.

The third area of landscaping is on the 92 Avenida La Pata property. The original approvals included 24 trees, one of which was in the public right-of-way. At some point after this property was developed the trees were removed. The applicant is proposing to replace all but four of the trees. The original plans included seven Brisbane box trees around the rear of the building. The applicant is proposing to replace three of these trees with the species listed above, and omit the other four to provide better access to the playground for the children. Even with the omitted trees, the property meets the minimum landscaping requirements.

Design Review Subcommittee

The Design Review Subcommittee (DRSC) reviewed the project on August 13, 2014. Attachments 2 and 3 include the staff report and minutes of that meeting. The DRSC supports the proposed project with the following recommended modifications identified in Table 3.

Table 3 - DRSC concerns and project modifications

<i>DRSC Concerns</i>	<i>Project modifications</i>
The property at 92 Avenida La Pata should include more landscaping, especially street trees.	Modified as requested. The project includes the replacement of the majority of the originally-approved trees.
The project should include measures to eliminate potential back-up on Avenida La Pata.	Modified as requested. The project includes an extended pick-up and drop-off schedule to spread out the most impactful times of the day in terms of traffic. The property to the south with the access road is not part of this property and has an Orange County Flood Control District easement.

PROJECT ANALYSIS

Conditional Use Permit

Preschools are a conditionally permitted use in the Neighborhood Commercial portion of the Rancho San Clemente Specific Plan. The use complies with all development standards, including parking and landscaping. While site access is a concern during times of pick-up and drop-off, the applicants are proposing to provide two and a half hour drop-off and pick-up periods. Additionally, condition of approval number 14 limits the maximum number of children that can be dropped-off or picked-up within any 30 minute period to 24. This type of condition of approval has been placed on other preschool projects in the City with no problems. Because each child is logged in upon arrival, the applicant can monitor traffic flows and make any necessary adjustments to the preschool's operations to maintain compliance with the conditions of approval.

A CUP is also required for the playground, which is ancillary to, and required for, the preschool use. While the 92 Avenida La Pata lot consists of the commercial building, parking lot and the first 10 feet of the playground area, the portion of the City-owned lot is used solely for the playground use. The Forster Ranch Specific Plan conditionally permits "Parks, athletic fields, and recreation centers." The use as a playground is similar to that of a park as many parks typically include playgrounds. Additionally, as no new permanent buildings or large structures are proposed, the site meets the purpose of the Open Space zone to "provide for the use and preservation of open space."

The proposed location of the preschool and the accompanying playground is appropriate for the area. The site is not adjacent to any other developable land so noise generated from an outdoor playground will not be a concern. Should parking or traffic become an issue, conditions of approval numbers 13, 14, and 15 limit the occupancy of the site to comply with the parking standards of the Zoning Ordinance, and would require the applicant to modify their pick-up and drop-off program to eliminate any traffic issues that may arise.

Minor Architectural Permit

The Forster Ranch and Rancho San Clemente Specific Plans do not specifically discuss the architecture of accessory structures on commercial sites. The gazebo and the arbor are compatible with the Spanish architectural style of the building because they are decorative metal structures that resemble black wrought iron. The rest of the structures are made of natural materials such as wood and stone, though they will not be highly visible from the street.

Continuing the existing fencing maintains the site's compliance with both Specific Plans, which state, "view fences (e.g. wrought iron) should be used adjacent to scenic highways instead of wood fences." The proposed landscaping along the fence will obscure views into the playground area and also continue the Scenic Corridor landscaping provided along Avenida La Pata.

The project proposes to bring the site back into compliance with the landscaping requirements. Additionally, condition of approval number 20 requires that all landscaping be maintained, ensuring the future compliance with the approved landscaping.

GENERAL PLAN CONSISTENCY

Table 4 summarizes how the proposed use is consistent with adopted policies outlined in the City of San Clemente General Plan.

Table 4 - General Plan Consistency

Policies and Objectives	Consistency Finding
<i>Child and Adult Day Care. We allow for the continuation of existing and development of new child and adult day-care facilities in any land use zone where they are compatible with adjacent uses. Policy LU-6.04</i>	Consistent. The project consists of establishing a new child day care facility that is compatible with adjacent land uses.
<i>Buffers and Setbacks. We require that new uses and buildings, characterized by differing functions, activities, density, scale and massing, to provide conditions of approval, landscaped buffers and/or setbacks between uses to prevent or reduce adverse impacts. Policy UD-3.03.</i>	Consistent. The project involves the addition of landscaped buffers that meet the landscaping requirements for Scenic Corridors.
<i>We require integration of outdoor spaces into the architectural and site designs by encouraging the use of courtyards, ... gardens, ... and other outdoor spaces enclosed by architectural or landscape elements. Policy UD-5.01.</i>	Consistent. The project creates a usable outdoor area in an underutilized and under-landscaped space.
<i>Open Space Preservation. We encourage and support the preservation of open space within and adjacent to the City. Policy BPR-4.01.</i>	Consistent. The project maintains the city-owned portion of the proposal as open space, with accessory structures that are permitted by the Forster Ranch Specific Plan.

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):

The Planning Division processed and completed an initial environmental assessment for this project in accordance with the California Environmental Quality Act (CEQA). The Planning Division has determined the project is categorically exempt from CEQA as a Class 1, Class

3, and Class 4 exemption pursuant to CEQA Guidelines Sections 15301, 15303 and 15304, because the project consists of a commercial use in an existing commercial facility with no expansion of use, the installation of a limited number of small accessory structures, and the minor alteration of land that does not involve the removal of mature, healthy trees.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can concur with staff and approve CUP 14-266 and MAP 14-267.

This is the recommended action. This action would result in the applicant developing the project as proposed, pending the approval of the lease of the City-owned property by the City Council.

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed project or conditions.

This action would result in any modifications being incorporated into the project which could include limiting the number of occupants, altering the proposed class schedule, or modifying the proposed landscaping.

3. The Planning Commission can recommend denial of the proposed project.

This action would result in the applicant's proposed preschool and associated playground being denied. The applicant would have the option of appealing the denial to the City Council.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve Conditional Use Permit 14-266/ Minor Architectural Permit 14-267, Gratitude Garden Preschool, a request to consider a new preschool located at 92 Avenida La Pata with a playground located on an adjacent City-owned property, subject to the attached Resolution and conditions of approval.

Attachments:

1. Resolution No. PC 14-038
Exhibit A – Conditions of Approval
2. DRSC Staff Report, dated August 13, 2014
3. DRSC Minutes, dated August 13, 2014
4. Site Photographs
5. Location Map
Plans



LOCATION MAP

Conditional Use Permit 14-266/ Minor Architectural Permit 14-267,
Gratitude Garden Preschool
92 Avenida La Pata, and a portion of APN 678-164-01 (City-owned)

