

# ATTACHMENT 2

District Real Estate  
File Nos.: 2021-155 and 2021-58.1

## REAL PROPERTY EXCHANGE AGREEMENT

This REAL PROPERTY EXCHANGE AGREEMENT (**Exchange Agreement**) is entered into by and between the Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California (**Valley Water**), and Saratoga Woods Community Association, Incorporated, a California Non-Profit Corporation (**Owners**), occasionally referred to as Party or Parties herein, with respect to the following:

### RECITALS

- A. Valley Water owns fee title to approximately 2,200 square feet (sf) of real property located in the City of Saratoga and County of Santa Clara along the easterly line of and being a portion of Assessor's Parcel Number 386-21-037, identified as Valley Water Parcel Real Estate File No. 2021-58.1, and legally described in Exhibit A, attached hereto and incorporated herein by reference (**Valley Water Property**).
- B. Owners own fee title to approximately 4,401 square feet (sf) of real property located in the City of Saratoga and County of Santa Clara at 12341 Saratoga Creek Drive, Saratoga, CA 95070 and being a portion of Assessor's Parcel Number 386-21-039 adjacent to Saratoga Creek, identified as Valley Water Parcel Real Estate File No. 2021-155, and legally described in Exhibit B, attached hereto and incorporated herein by reference. Valley Water seeks to acquire a permanent easement in, over and upon to real property described in Exhibit B (**Owners' Property**). For purposes of this Exchange Agreement, the Valley Water Property and the Owners' Property may be referred to individually as the (**Exchange Property**) or collectively as the (**Exchange Properties**).
- C. Valley Water and the Owners wish to exchange the Valley Water Property for a permanent Water Management Easement (Easement) in, over and upon Owner's Property. Valley Water's Board of Directors (Board) finds that the Valley Water Property is no longer necessary to be retained for the uses and purposes thereof, and the Owners' Property to be acquired is required for Valley Water use. The Easement over Owner's Property will allow installation of an above-grade pipeline and provide access for personnel, equipment and utilities from Saratoga Creek Drive to Saratoga Creek. Valley Water and the Owners agree that the Exchange Properties are of equal value to each party.
- D. The Board is authorized to "exchange real property of equal value with any person, firm, or corporation ... where the real property to be exchanged is not required for district use and the property to be acquired is required for district use."  
by majority vote pursuant to Section 31 of the Santa Clara Valley Water District Act - California Water Code, Appendix Chapter 60.

**NOW, THEREFORE**, in consideration of the foregoing and other valuable consideration, the sufficiency of which are hereby acknowledged, Valley Water and the Owners agree to the exchange of properties on the terms and conditions set forth below:

## AGREEMENT

1. Equal Exchange of Consideration: Valley Water agrees to convey the Valley Water Property with no monetary payment to the Owners, and the Owners agree to convey the Owners' Property with no monetary payment to Valley Water on the terms and conditions set forth in this Exchange Agreement. The exchange of Valley Water Property and Owners' Property and the promises and obligations made in this Exchange Agreement shall constitute full and final consideration for the exchange of real property interests.
  
2. Valley Water Property: The parties agree that Valley Water will convey fee-title of the Valley Water Property to the Owners to remedy Owners' encroachment onto Valley Water Property.
  - a. No Warranties or Representations. Except as otherwise stated in this Exchange Agreement, Valley Water makes no representations or warranties regarding quality or fitness of the property conveyed and compliance with local ordinances, including, but not limited to, zoning, setbacks, floor area ratios, etc.
  
  - b. No New Liens. Valley Water shall not, after full execution of this Exchange Agreement, cause or permit any new liens, covenants, conditions, restrictions, easements or any other matter to encumber title to the Valley Water Property by record or otherwise, except for matters which do not materially interfere with the use and occupancy of the Valley Water Property.
  
3. Owners' Property: The parties agree that the Owners will convey a non-exclusive Water Management Easement on the Owner's Property to Valley Water to improve the Valley Water access to Saratoga Creek and other properties owned by Valley Water.
  - a. No Monetary Liens. The Owners shall convey the Easement to Valley Water free of all mortgages, deeds of trust, mechanics' liens, and all other monetary liens, encumbrances, taxes, assessments and leases (recorded and/or unrecorded).
  
  - b. No New Liens. The Owners shall not, after full execution of this Exchange Agreement, cause or permit any new liens, covenants, conditions, restrictions, easements or any other matter to encumber title to the Owners' Property by record or otherwise.
  
4. Escrow:
  - a. Delivery and Recording of Deeds. No later than thirty (30) days from the date this Exchange Agreement is executed by both parties, Valley Water shall deliver to: Fidelity National Title Company, 675 N. First Street, 4<sup>th</sup> Floor, San Jose, CA 95112, Escrow Number FSBC-8012200409-KG, Escrow Officer Katherine Gutierrez (Escrow Holder) an executed and notarized Quitclaim Deed No. 2021-58.1. The Owners shall likewise deliver to the office of the Escrow Holder, Escrow Number FSBC-8012200409-KG, an executed and notarized Easement Deed No. 2021-155. Each party shall deliver any such additional documents and instruments as Escrow Holder may reasonably require in order to close escrow. The parties shall provide Escrow Holder with their separate instructions for closing escrow consistent with the terms of this Exchange Agreement.

Subject to the satisfaction or waiver of the conditions set forth in this Exchange Agreement, the Escrow Holder shall close the escrow and record the Deeds on such date (Closing Date) as is directed by the parties in accordance with this Exchange Agreement and their respective escrow instructions, but in no event later than thirty (30) days after delivery of the Deeds to the Escrow Holder. Closing escrow is conditioned upon Fidelity National Title Company issuing or being committed to issue a CLTA Owners' Title Insurance policy for each Exchange Property.

b. Real Property Taxes. Real property taxes and assessments, if any, on the Exchange Properties shall not be prorated with each party responsible for paying property taxes and assessments, including any and all interest and penalties on their respective property up to the date of recordation of the deeds to the respective party.

c. Escrow Costs and Fees. Each party shall pay all costs of escrow and recording fees incurred in this transaction including documentary stamp tax (if required by law), fees and costs, including costs associated with removal of any monetary liens on the Exchange Property conveyed by that party, and title insurance policy premium for the title policy received by each party.

d. Termination. If the conditions of this Section 4 are not satisfied or waived by either Owners or Valley Water in its sole discretion, the unsatisfied party may terminate this Exchange Agreement by written notice to the other party, in which event the Parties shall be relieved and released of and from any further duties, obligations, rights, or liabilities hereunder, except as otherwise provided herein. If the unsatisfied party fails to provide written notice of termination of this Exchange Agreement prior to the Close of Escrow, the condition shall be deemed satisfied.

e. Rights and Liabilities of the parties in the Event of Termination. In the event this Agreement is terminated, and escrow is canceled for any reason, all parties shall be excused from any further obligations hereunder, except as otherwise provided herein. Upon any such termination of escrow, all parties hereto shall be jointly and severally liable to Escrow Holder for payment of its title and escrow cancellation charges (subject to rights of subrogation against any party whose fault may have caused such termination of escrow), and each party expressly reserves any other rights and remedies which it may have against any other party by reason of a wrongful termination or failure to close escrow.

5. Representations and Warranties. Each party, on behalf of itself and the Exchange Property it currently owns, makes the following representations and warranties:

a. Authority. Each party represents and warrants, as of the date of execution of this Exchange Agreement (i) that it has full legal right, power and authority to execute and fully perform its obligations under this Exchange Agreement and (ii) that the persons executing this Exchange Agreement and other documents required hereunder are authorized to do so.

b. Valley Water Indemnification. Valley Water shall indemnify, defend, and hold harmless the Owners against any and all claims, liabilities, losses, damages, suits, actions, expenses, and demands of any kind or nature, resulting from or arising out of (i) Valley Water's negligent acts, omissions, or willful misconduct, or (ii) resulting from

any breach by Valley Water of their representations, warranties or covenants contained in this agreement, except to the extent such loss or damage is caused by or arises out of a breach by, or the negligence, omissions or willful misconduct of the Owners.

c. Owners' Indemnification. The Owners shall indemnify, defend, and hold harmless Valley Water and its officers, employees and agents against any and all claims, liabilities, losses, damages, suits, actions, expenses, and demands of any kind or nature, resulting from or arising out of (i) The Owners' negligent acts, omissions, or willful misconduct, or (ii) resulting from any breach by the Owners of their representations, warranties or covenants contained in this agreement, except to the extent such loss or damage is caused by or arises out of a breach by, or the negligence, omissions or willful misconduct of Valley Water, its officers, employees or agents.

d. Real Estate Commissions. Valley Water is under no obligation or liability to pay any such commission or compensation to any broker or finder arising from, related to, or in connection with this transaction. Owners agrees to and do hereby indemnify and hold Valley Water harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of Owner in connection with this transaction.

e. Survival of Warranties and Obligations. The representations, warranties, and promises given by the parties in this Section 5, and all obligations under this Exchange Agreement shall survive the delivery of the grant deeds to each party.

6. Conditions to Effectiveness. This Exchange Agreement shall not be binding or effective against Valley Water until and unless Valley Water's governing board has adopted a resolution that approves this Exchange Agreement.

7. Possession. Possession of each Exchange Property shall be delivered upon recordation of the quitclaim deed and the Easement grant deed.

8. General Provisions.

a. Entire Exchange Agreement. This Exchange Agreement, together with all exhibits attached hereto, constitutes the entire Exchange Agreement between the parties with respect to the conveyance of the Exchange Properties.

b. Further Assurances. The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Exchange Agreement and the intentions of the parties.

c. All notices and any other communications permitted or required under this Exchange Agreement must be in writing and will be effective (i) immediately upon delivery in person, or (ii) upon delivery by a commercial courier or delivery service for overnight delivery, or (iii) three (3) days after deposit with the United States Postal

Service, certified mail, return receipt requested, postage prepaid. Each party may change its address by written notice in accordance with this Section 10.c.

Owner's Information for Notice:  
Saratoga Woods Community Association, Incorporated  
12341 Saratoga Creek Drive  
Saratoga, CA 95070

Valley Water Information for Notice:  
Santa Clara Valley Water District  
Attention: Real Estate Services Unit Manager  
5750 Almaden Expressway  
San Jose, CA 95118

- d. Governing Law/Venue. This Exchange Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California. Any action brought to enforce this Exchange Agreement shall be initiated in the County of Santa Clara, California.
- e. Modification Waiver. No modification, waiver, amendment or discharge of this Exchange Agreement shall be valid unless the same is in writing and signed by both parties.
- f. Satisfaction or Waiver of Contingencies. The consummation of the Closing of Escrow shall be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived. Notwithstanding the foregoing, all of the other provisions of this Exchange Agreement shall survive the Closing, to the extent applicable.
- g. Severability. If any term, provision, covenant or condition of this Exchange Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Exchange Agreement shall not be affected thereby, and each remaining term, provision, covenant or condition of this Exchange Agreement shall be valid and enforceable to the fullest extent permitted by law.
- h. Successors. All terms of this Exchange Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- i. Counterparts and Electronic/digital Signatures. This Exchange Agreement may be executed in any number of counterparts, and all such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original, provided both parties have fully executed the Exchange Amendment. Unless otherwise prohibited by law, the parties agree that an electronic copy of a signed agreement, or an electronically signed agreement, has the same force and legal effect as an agreement executed with an original ink signature. The term "electronic copy of a signed agreement," refers to a transmission by facsimile,

electronic mail, or other electronic means of a copy of an original signed agreement in a portable document format. The term "electronically signed agreement" means an agreement that is executed by applying an electronic signature using technology approved by Valley Water.

j. Effective Date. The Effective Date of this Exchange Agreement shall be the date upon which it has been authorized and executed by both parties.

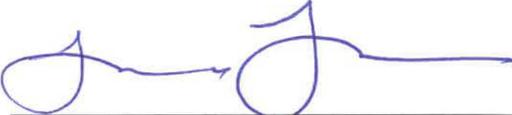
**Santa Clara Valley Water District**

**Saratoga Woods Community Association,  
Incorporated**

Valley Water has executed this agreement

as of: \_\_\_\_\_  
Date

By: \_\_\_\_\_  
Melanie Richardson, P.E.  
Interim Chief Executive Officer

  
\_\_\_\_\_  
Linda LaCroix, President

March 26, 2025  
Date

ATTEST: Candice Kwok-Smith

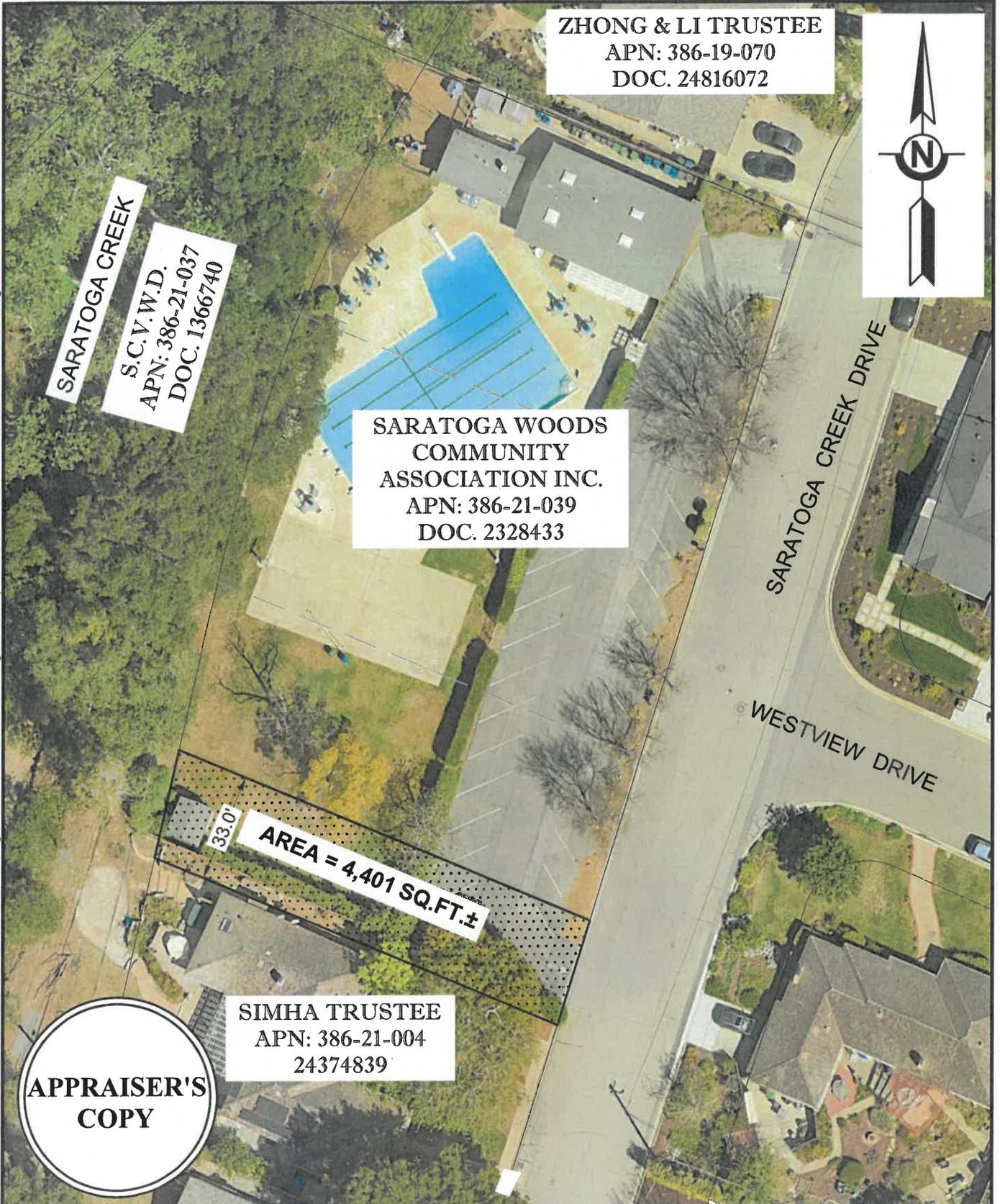
\_\_\_\_\_  
Clerk, Board of Directors

Recommended for Approval:

By:   
Senior Real Estate Agent

By:   
Real Estate Services Unit Manager

SCVWD S:\REQUESTS\SARATOGA CREEK\2024\_10\12 Working\Office\ROW\Plats and Legal Descriptions\2021-155\2024-101\_2021-155Plat.dwg



**APPRAISER'S COPY**

SANTA CLARA VALLEY WATER DISTRICT

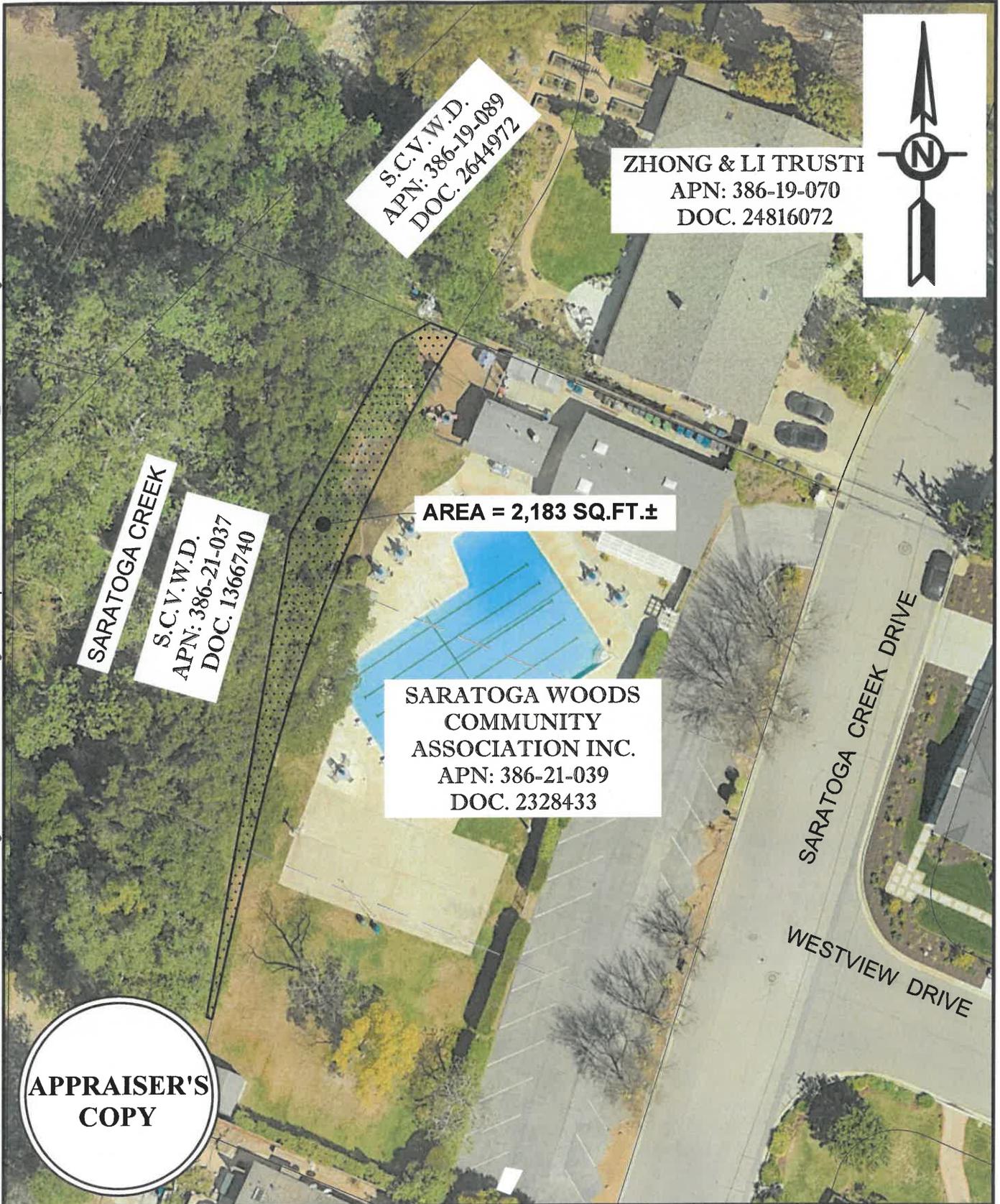


SCALE: 1" = 40'

|                  |            |
|------------------|------------|
| RESU FILE NO.    | 2021-155   |
| APN              | 386-21-039 |
| TITLE REPORT NO. | 8012200409 |
| DRAWN            | HZ         |

EXHIBIT A

SANTA CLARA VALLEY WATER DISTRICT



**APPRAISER'S COPY**

SCVWD S:\REQUESTS\SARATOGA CREEK\2024\_10112 Working\Office\ROW\Plats and Legal Descriptions\2021-58.1\2024-101\_2021-58.1Plat.dwg

SANTA CLARA VALLEY WATER DISTRICT



SCALE: 1" = 40'

|                  |            |
|------------------|------------|
| RESU FILE NO.    | 2021-58.1  |
| APN              | 386-21-037 |
| TITLE REPORT NO. | 8012200409 |
| DRAWN            | HZ         |

SHEET 1 OF 1