

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 23-

**DETERMINING AND DECLARING THE PUBLIC NECESSITY FOR THE
ACQUISITION OF CERTAIN REAL PROPERTY OR INTERESTS IN REAL
PROPERTY BY EMINENT DOMAIN FOR THE COYOTE CREEK FLOOD
MANAGEMENT MEASURES PROJECT (PROJECT NO. 91864007)
(CODE OF CIVIL PROCEDURE SECTIONS 1245.220, et seq.)**

WHEREAS, the Santa Clara Valley Water District (Valley Water) intends to complete a multi-phased flood protection project [Coyote Creek Flood Management Measures Project (CCFMMP) and Coyote Creek Flood Protection Project (CCFPP), collectively referred to as Coyote Creek Flood Projects] to implement flood improvements along Coyote Creek to protect against a 20-year flood event, similar to the one that inundated areas in San Jose in February 2017; and

WHEREAS, the Coyote Creek Flood Projects' limits comprise approximately 9 miles of Coyote Creek, between Montague Expressway and Tully Road, all within the City of San Jose; and

WHEREAS, on February 20, 2020, the Federal Energy Regulatory Commission (FERC) ordered Valley Water to reduce risks to public safety by implementing certain risk reduction measures for Anderson Dam operation related to the completion of the Anderson Dam Tunnel Project; and

WHEREAS, risk reduction measures must be implemented along Coyote Creek before water is released from the completed Anderson Dam Tunnel, expected in August 2024; and

WHEREAS, Valley Water identified approximately 40 percent of the Coyote Creek Flood Projects as satisfying these risk reduction measure needs and is implementing them as an accelerated flood management project, the CCFMMP; and

WHEREAS, completion of the CCFMMP will coincide with completion of the Anderson Dam Tunnel, expected in August 2024; and

WHEREAS, the overall flood risk reduction objective of protecting areas of Coyote Creek against a flood event approximately equivalent to the February 2017 flood event will be met by the completion of both the CCFMMP and the CCFPP; and

WHEREAS, CCFMMP, as part of the FERC Order Compliance Project (FOCP), is exempt from the California Environmental Quality Act (CEQA) review pursuant to the statutory exemption for specific actions necessary to prevent or mitigate an emergency under CEQA Guidelines §15269(c) and Public Resources Code §21080(b)(4). Valley Water filed a Notice of Exemption for FOCP with Santa Clara County Clerk-Recorder Office on June 29, 2020; and

WHEREAS, Valley Water is authorized to condemn property for the Project pursuant to Article I, Section 19 of the California Constitution, Part 3, Title 7 of the California Code of Civil Procedure, Section 6 of the Santa Clara Valley Water District Act, and other provisions and principles of law; and

WHEREAS, the property interests to be acquired for the Project are described and shown in more detail in the plat map and legal description attached hereto as Exhibit A and Exhibit B incorporated herein (the "Property"); and

WHEREAS, the Project cannot be completed without the Property, and acquisition of the Property is accordingly necessary and in the public interest; and

WHEREAS, the use of the Property for the Project will not interfere with or impair any known, existing public uses and, therefore, is compatible with any other public uses pursuant to Code of Civil Procedure Section 1240.510; and

WHEREAS, Valley Water made an offer to purchase the Property from the owners of record on November 22, 2022, based on a current appraisal and in compliance with Government Code section 7267.2; and

WHEREAS, the owner has been unresponsive to several attempts to negotiate a settlement; and

WHEREAS, on January 27, 2023, Valley Water provided by certified mail to all persons whose names appear on the last Equalized County Assessment Roll as having an interest in the Property a notice that Valley Water's Board of Directors would hold a hearing on February 28, 2023, to consider the adoption of a resolution of necessity authorizing Valley Water to acquire the Property by eminent domain; and

WHEREAS, Valley Water's January 27, 2023 notice advised all such interested persons of the time and place for the hearing, their right to be heard in relation to that matter, and that their failure to file a written request to appear and be heard at the hearing by February 13, 2023, would result in a waiver of their right to be heard; and

WHEREAS, Valley Water has calendared consideration of this Resolution as an item on its Agenda and invited public comment prior to the meeting; and

WHEREAS, Valley Water's Board of Directors held a public hearing on February 28, 2023, to consider the adoption of this Resolution, and all interested parties were given an opportunity to be heard.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District finds, determines, and hereby declares:

1. The public interest and necessity require the Project;
2. The Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
3. The Properties described herein in plat maps and legal descriptions attached hereto as Exhibit A and Exhibit B are necessary for the Project;
4. Valley Water made the offer required by Government Code section 7267.2 to the owners of record;

5. Valley Water has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property;
6. Valley Water has complied with the requirements of the California Environmental Quality Act ("CEQA") for the Project, The FOCP was determined to be exempt from CEQA review pursuant to the statutory exemption for specific actions necessary to prevent or mitigate an emergency under CEQA Guidelines §15269(c) and Public Resources Code §21080(b)(4). Valley Water filed a Notice of Exemption for FOCP with Santa Clara County Clerk-Recorder Office on June 29, 2020. This acquisition is considered part of the CCFMMP, which is included in the FOCP and continues to be exempt from CEQA pursuant to the above-cited provisions; and
7. Valley Water's Office of the District Counsel and/or its designee is hereby authorized to commence and prosecute an eminent domain proceeding to acquire the Property, to deposit the amount of probable compensation pursuant to Code of Civil Procedure Section 1255.010, and to acquire prejudgment possession of the Property as may be necessary for the Project.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District on the following, two-thirds majority vote, on February 28, 2023.

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

JOHN L. VARELA
Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors

EXHIBIT A COVERSHEET

PLAT MAP AND LEGAL DESCRIPTION

WATER MANAGEMENT AND/OR STORM WATER DRAINAGE EASEMENT, FILE NO. 4021-289

No. of Pages: 4

Exhibit Attachments: None

EXHIBIT A

WATER MANAGEMENT AND/OR STORM WATER DRAINAGE EASEMENT, File No. 4021-289

An easement for water management and/or storm water drainage purposes in, upon, over, and across that certain real property in the City of San Jose, County of Santa Clara, State of California, herein after more particularly described below.

Said easement area shall be kept clear of any type of building, fences, structure, pavement, or trees unless prior written approval is obtained from Valley Water.

The easement shall include the right to construct, reconstruct, inspect, maintain, and repair a channel, protection works, and appurtenant structures, together with the right to trim or remove such trees or brush within the easement area as may constitute a hazard to persons or property or may interfere with the use of said area for the purpose granted. It also shall include the right to enter upon said land with vehicles, tools, implements, and other materials, take there from and use earth, rock, sand, and gravel for construction, maintenance, and repair of said channel, protections work, and appurtenant structures by Valley Water, its officers, agents, and employees, and by persons under contract with it and their employees whenever and wherever necessary for flood control or storm drainage purposes.

The easement shall also include the non-exclusive right of ingress from and egress to public streets to the easement area described in Exhibit A and B, over and across the property of the Grantor by such route or routes as shall occasion the least practicable damage to the property and inconvenience to Grantor for the purposes of routine inspection and maintenance of the improvements within the easement. Valley Water shall provide reasonable advance notification of its intent to enter Grantor's property.

EXHIBIT A (Continued)

Santa Clara Valley Water District
San Jose, California

PROJECT: COYOTE CREEK FLOOD
MANAGEMENT MEASURE
PROJECTS

RESU File No.: 4021-289
By: B. Bains

An easement over that certain real property situate in the City of San Jose, County of Santa Clara, State of California, as described in that certain Deed, recorded as Document Number 24365724, filed on December 24, 2019, in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

Permanent Easement (P.E.)

COMMENCING at the most westerly corner of the lands as shown as "0.629 Ac." on that certain Record of Survey, filed on May 26, 1960, in Book 120 of Maps at Page 48, in the Office of the Recorder, County of Santa Clara, State of California;

Thence along the northwesterly line of said lands, N64° 57' 52"E, 65.23 feet to the **POINT OF BEGINNING**;

Thence continuing along said northwesterly line, N64° 57' 52"E, 17.65 feet;

Thence leaving said northwesterly line, the following seven (7) courses:

- 1) S21° 17' 21"E, 33.54 feet to the beginning of a curve concave northwesterly and having a radius of 118.56 feet;
- 2) Southwesterly along said curve thru a central angle of 49° 23' 15", an arc distance of 102.20 feet;
- 3) S28° 05' 54"E, 9.54 feet;
- 4) N61° 25' 39"W, 17.69 feet;
- 5) N28° 05' 54"W, 9.54 feet to the beginning of a curve concave northwesterly and having a radius of 100.75 feet;
- 6) Northwesterly along said curve thru a central angle of 49° 23' 15", an arc distance of 86.84 feet;
- 1) N21° 17' 21"W, 32.39 feet, to the **POINT OF BEGINNING**.

Containing 2,417 square feet of land, more or less.


EXHIBIT A (Continued)

BASIS OF BEARINGS:

The bearing of N64° 57' 52"E, shown as N64° 12'E along the northwesterly line of the lands as shown as "0.629 Ac." on that certain Record of Survey, filed on May 26, 1960, in Book 120 of Maps at Page 48, all in the Office of the Recorder, County of Santa Clara, State of California, was used as Basis of Bearings shown hereon.

SURVEYOR'S STATEMENT:

The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.



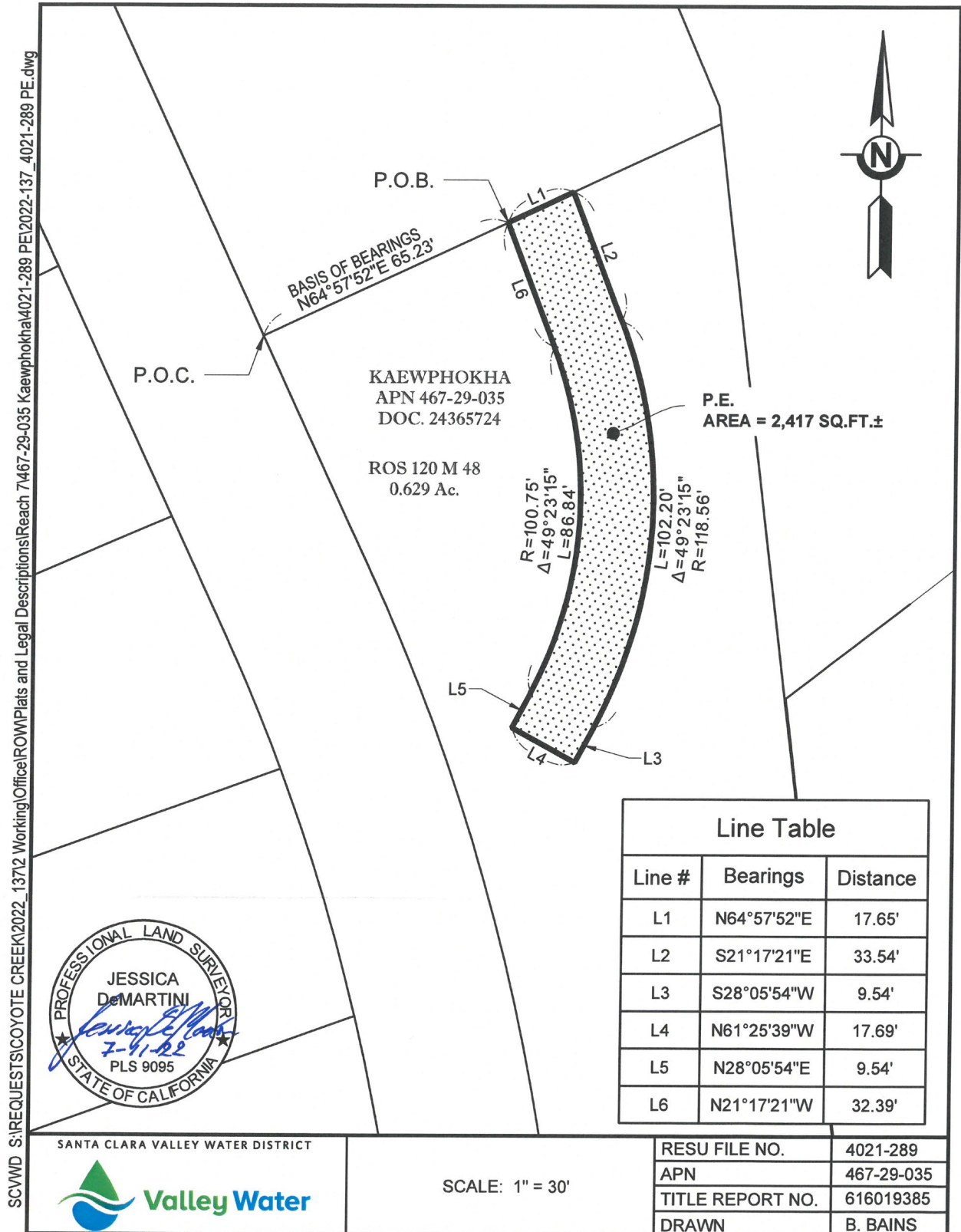
Jessica DeMartini, PLS 9095

7/11/22
Date



EXHIBIT A (Continued)

KAEWPHOKHA



SHEET 1 OF 1

EXHIBIT B COVERSHEET

PLAT MAP AND LEGAL DESCRIPTION

TEMPORARY CONSTRUCTION EASEMENT, FILE NO. 4021-392

No. of Pages: 5

Exhibit Attachments: None

EXHIBIT B

(TEMPORARY CONSTRUCTION EASEMENT, File No. 4021-392)

A temporary construction easement in, upon, over, and across that certain real property in the City of San Jose, County of Santa Clara, State of California, herein after more particularly described below.

This temporary construction easement is granted under the express conditions listed below:

1. This easement is necessary for the purpose of constructing the Coyote Creek Flood Management Measures Project and related activities incident to construction. This temporary construction easement shall not be revoked and shall continue in full force and effect until December 31, 2024, at which time the temporary construction easement shall terminate unless otherwise agreed by the parties hereto.
3. Santa Clara Valley Water District (Grantee) agrees to use all reasonable efforts to keep any roadway covered by this easement open to traffic and to not interfere with residential occupants or construction activity of Grantor on site. Grantee will keep area covered by the easement clean and remove all debris related to its construction.
4. Grantee agrees to indemnify and hold harmless Grantor from and against any all claims, damages, liabilities, costs or any expenses whatsoever, arising from or caused, directly or indirectly by the entry onto the property by Grantee or its agent's, employees, invitees, contractors and subcontractors.

EXHIBIT B (Continued)

Santa Clara Valley Water District
San Jose, California

PROJECT: COYOTE CREEK FLOOD
MANAGEMENT MEASURE
PROJECTS

RESU File No.: 4021-392
By: B. Bains

An easement over that certain real property situate in the City of San Jose, County of Santa Clara, State of California, as described in that certain Deed, recorded as Document Number 24365724, filed on December 24, 2019, in the Office of the Recorder, County of Santa Clara, State of California, more particularly described as follows:

Temporary Construction Easement (T.C.E.)

COMMENCING at the most westerly corner of the lands shown as "0.629 Ac." on that certain Record of Survey, filed on May 26, 1960, in Book 120 of Maps at Page 48, in the Office of the Recorder, County of Santa Clara, State of California;

Thence along the northwesterly line of said lands, N64° 57' 52"E, 59.76 feet to the **POINT OF BEGINNING**;

Thence leaving said northwesterly line, the following eight (8) courses:

- 1) S20° 20' 48"E, 32.63 feet;
- 2) S66° 00' 31"W, 6.53 feet;
- 3) S23° 42' 24"E, 35.21 feet;
- 4) S65° 31' 32"W, 8.32 feet;
- 5) S08° 56' 00"W, 9.34 feet to the beginning of a curve concave northwesterly and having a radius of 91.26 feet;
- 6) Southwesterly along said curve thru a central angle of 21° 54' 21", an arc distance of 34.89 feet;
- 7) N30 57' 50"W, 2.01 feet;
- 8) S70° 22' 30"W, 12.70 feet to a point on the westerly line of the said lands, said point also being the beginning of a non-tangent curve concave southwesterly and having a radius of 538.41 feet, a radial line to said point bears N64° 41' 37"E;

Thence along said westerly line, southeasterly along said curve thru a central angle of 3° 01' 50", an arc distance of 28.48 feet;

Thence leaving said westerly line the following nine (9) courses:

- 1) N69° 38' 16"E, 10.77 feet;
- 2) N28° 05' 54"E, 10.00 feet;
- 3) S61° 54' 06"E, 6.81;
- 4) N28° 05' 17"E, 4.89 feet;
- 5) N61° 25' 39"W, 12.81 feet;

EXHIBIT B (Continued)

- 6) N28° 05' 54"E, 9.54 feet to the beginning of a curve concave northwesterly and having a radius of 100.75 feet;
- 7) Northerly along said curve thru a central angle of 49° 23' 15", an arc distance of 86.84 feet;
- 8) N21° 17' 21"W, 32.39 feet a point on said northwesterly line;

Thence along said northwesterly line, S64° 57' 52"W, 5.48 feet, to the **POINT OF BEGINNING**.


Containing 1,638 square feet of land, more or less.

BASIS OF BEARINGS:

The bearing of N64° 57' 52"E, shown as N64° 12'E along the northwesterly line of the lands as shown as "0.629 Ac." on that certain Record of Survey, filed on May 26, 1960, in Book 120 of Maps at Page 48, all in the Office of the Recorder, County of Santa Clara, State of California, was used as Basis of Bearings shown hereon.

SURVEYOR'S STATEMENT:

The description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

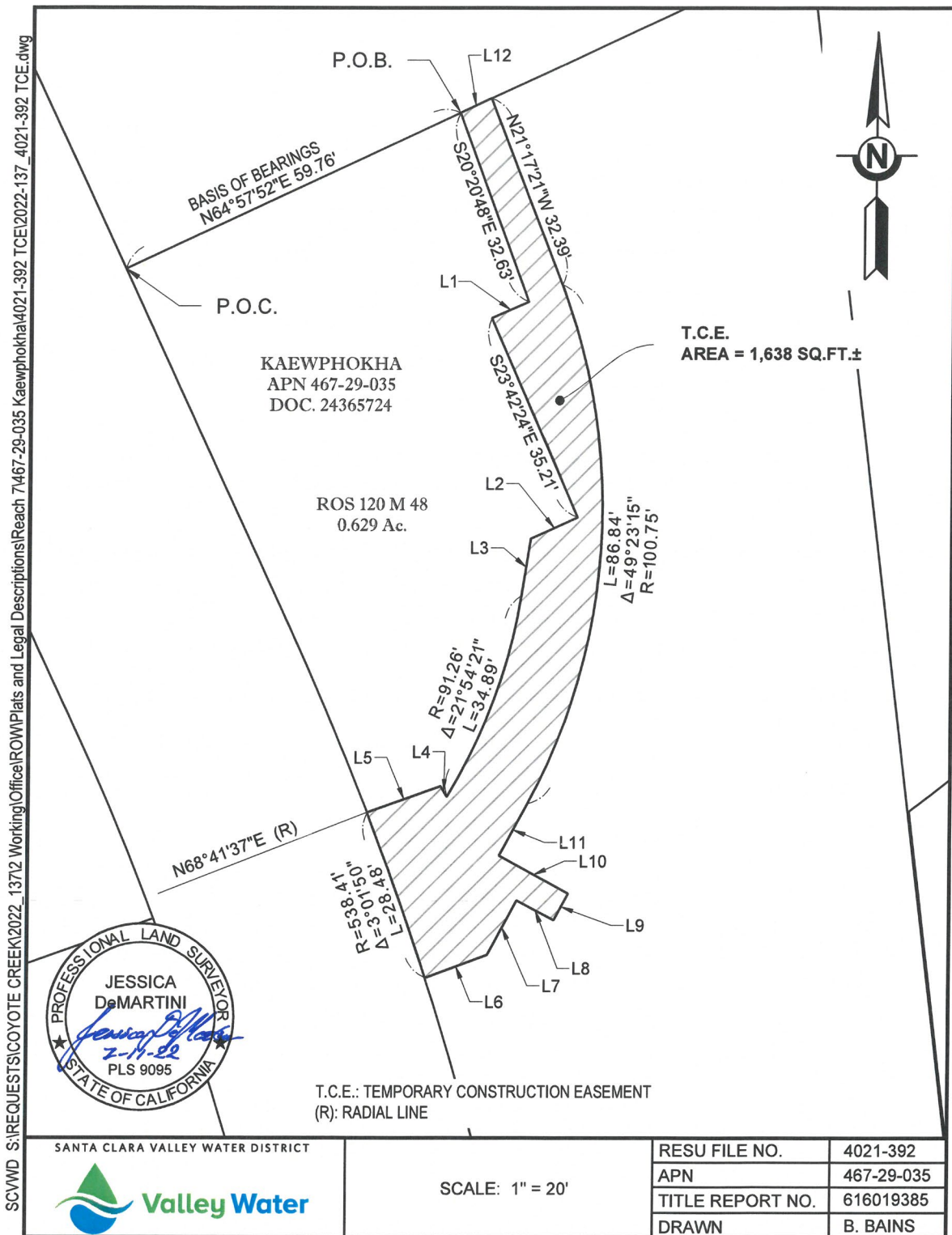

Jessica DeMartini, PLS 9095

7/11/22
Date



EXHIBIT B (Continued)

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SHEET 1 OF 2

EXHIBIT B (Continued)

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Line Table		
Line #	Bearings	Distance
L1	S66°00'31"W	6.53'
L2	S65°31'32"W	8.32'
L3	S08°56'00"W	9.34'
L4	N30°57'50"W	2.01'
L5	S70°22'30"W	12.70'
L6	N69°38'16"E	10.77'
L7	N28°05'54"E	10.00'
L8	S61°54'06"E	6.81'
L9	N28°05'17"E	4.89'
L10	N61°25'39"W	12.81'
L11	N28°05'54"E	9.54'
L12	S64°57'52"W	5.48'



SANTA CLARA VALLEY WATER DISTRICT



SCALE: N.T.S.

RESU FILE NO.	4021-392
APN	467-29-035
TITLE REPORT NO.	616019385
DRAWN	B. BAINS

SHEET 2 OF 2