

Watershed:	Uvas/Llagas
Project:	Upper Llagas Creek
Real Estate File No.:	5010-229.1, 5010- 244.1

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

RESOLUTION NO. 18-

**ACQUISITION OF A GRANT DEED FROM COUNTY OF SANTA CLARA,
CONVEYANCE OF A CONSERVATION EASEMENT TO COUNTY OF SANTA CLARA
AND CITY OF MORGAN HILL FOR LAKE SILVEIRA
FOR THE UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT
NO. 26174051 (MORGAN HILL), AND EXEMPTION OF LAKE SILVEIRA FROM
RESOLUTION 82-30**

WHEREAS, on June 10, 2014, the Board certified the Environmental Impact Report for the Upper Llagas Creek Flood Protection project (Project) by Resolution No. 14-67; and

WHEREAS, the Project requires real property (APN's 779-03-114, 779-06-030, and 779-49-014) of Lake Silveira from the County of Santa Clara as mitigation; and

WHEREAS, the County of Santa Clara and City of Morgan Hill desire a Conservation Easement for park purposes of trail connectivity, habitat conservation, and open space preservation at Lake Silveira (Real Estate File No. 5010-229: APN's 779-03-114, 779-06-030, and 779-049-014) and within the previously acquired District's Link property (Real Estate File No. 5010-244: APN 779-06-032), hereinafter all referred to as "Lake Silveira"; and

WHEREAS, the rights to be conveyed in the Conservation Easement are not required by District for the Project or other District purposes; and

WHEREAS, conveyance of this Conservation Easement and payment of \$1,350,650 constitute the consideration from the Santa Clara Valley Water District to the County of Santa Clara for the sale; and

WHEREAS, the proposed exchange of real property interests is set forth in the Purchase and Sale Agreement between the County of Santa Clara and the District (Exhibit A); and

WHEREAS, Board approved Resolution 82-30, Declaring Policy to Govern Joint Use of Lands Acquired for the Upper and Lower Llagas Creek PL-566 Watershed Projects; and

WHEREAS, the Project is a portion of the PL-566 Project authorized by the Watershed Protection and Flood Prevention Act; and

WHEREAS, Resolution 82-30 states that it shall be the policy of this District that it shall neither make nor permit any use whatever for public access for park, trail, recreation or similar purposes of lands presently owned or acquired by it for the Upper and Lower Llagas Creek PL-566 Watershed projects while adjacent lands are within the areas designated as "Resource Conservation Areas" in the land use plan of the General Plan of the County of Santa Clara; and

WHEREAS, in accordance with the County of Santa Clara land use plan of June 2013, the Resource Conservation Areas occur within or adjacent to Reaches 1, 2, 3, 4, 5, 6, 7A, and 14 of the PL-566 Project; and

WHEREAS, passive recreation is permitted by the County of Santa Clara within the Resource Conservation Areas; and

WHEREAS, Resolution 82-30 would negatively impact proposed future trails adjacent to and within the County of Santa Clara's designated Recreation Conservation Areas; and

WHEREAS, the County of Santa Clara's ability to have trail connectivity in Lake Silveira was a required term of the sale of the property to the District; and

WHEREAS, trail connectivity in the Lake Silveira area will provide the public with greater recreation opportunities and is in the public interest; and

WHEREAS, on January 10, 2017, the Board previously approved amending Resolution 82-30.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District:

1. The recitals set forth above are incorporated herein by this reference.
2. Lake Silveira, as described and in accordance with the proposed Purchase and Sale Agreement between the County of Santa Clara and the District (Exhibit A), is hereby exempt from the provisions of District Resolution 82-30 such that that the prohibitions for public access for park, trail, recreation or similar purposes shall not apply, and Resolution 82-30 is hereby amended to allow such change. The terms of Resolution 82-30 shall otherwise remain in effect.
3. Pursuant to Cal. Water Code Appendix Section 60-31, the Board by majority vote, approves this policy amendment.
4. The Chief Executive Officer is authorized to execute the Purchase and Sale Agreement between the County of Santa Clara and the District attached as Exhibit A and the necessary real estate documents identified therein including the Certificate of Acceptance and the Conservation Easement Deed.
5. All exhibits referenced in this resolution are made a part hereof.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on March 13, 2018:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

RICHARD P. SANTOS
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk/Board of Directors

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”), made effective as of _____, 2018 (the “**Effective Date**”), is entered into by and between the County of Santa Clara, a political subdivision of the State of California, with its principal offices located at 70 West Hedding Street, San Jose, California 95113 (“**Seller**” or “**County**”) and Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California located at 5750 Almaden Expressway, San Jose, California 95118 (“**Buyer**” or “**SCVWD**”). County and SCVWD are sometimes collectively referred to herein as the “**Parties**” and each of the Parties is sometimes singularly referred to herein as a “**Party**”.

RECITALS

- A. County is the owner of that certain 52.932 acre property commonly known as Lake Silveira, located within the City of Morgan Hill, County of Santa Clara, State of California, (APN's: 779-03-114/779-06-030/779-49-014), and more particularly described on Exhibit A attached hereto (“**Property**”).
- B. SCVWD is the owner of that certain 14,791 square foot parcel, known as the Link property located within the City of Morgan Hill, County of Santa Clara, State of California, (APN 779-06-032) more particularly described on Exhibit B attached hereto (“**Olive Street Crossing**”).
- C. For park and other public purposes, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property, subject to the terms and conditions of this Agreement.
- D. Buyer desires to purchase the Property as required to construct the Upper Llagas Creek Flood Protection Project (“**Project**”), consistent with the Conservation Values set out herein below, and for the development and construction of the on-site compensatory mitigation required for the Project within a designated portion of the Property that will be protected in perpetuity with a Mitigation Easement (as set out herein below) over that designated portion of the Property. Said Mitigation Easement will be negotiated with the United States of America, acting by and through the United States Army Corps of Engineers (the “**Corps**”).
- E. As part of this transaction, Buyer desires to grant Seller and the City of Morgan Hill (“**City**”) the Conservation Easement over the entire Property and the Olive Street Crossing to ensure that the Property will serve, in perpetuity, the park purpose of trail connectivity through linkage of this site to the regional system of trails within the geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and open space preservation consistent

with the 1995 Countywide Trails Master Plan, as amended from time to time (the "Conservation Values").

F. As part of this transaction, and as more specifically addressed in the attached Conservation Easement Agreement (**Exhibit G**), the City desires to and will plan, design, construct, develop, operate, and maintain trails within the Property and the Olive Street Crossing.

NOW THEREFORE, for good and valuable consideration, as provided for herein, the mutual covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree to the foregoing and as follows:

1. **Purchase and Sale.** In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property pursuant to the attached Grant Deed, with attachments, shown on **Exhibit C** ("**Grant Deed**") for the Purchase Price (defined in **Section 2**).

2. **Purchase Price.** In exchange for the conveyance of fee simple title to Buyer, Buyer shall provide consideration for the Property in the form of (1) cash to Seller in the amount of \$1,350,650.00, and (2) a grant to Seller and to the City of easement rights in the form of the Conservation Easement, as defined herein below. The cash and grant of Conservation Easement are collectively the purchase price ("**Purchase Price**").

3. **Escrow.** The Parties have opened an escrow account, having an Escrow Number 06160106639-RR and SCVWD File Number 5010-229 ("**Escrow**"), with Old Republic Title Company ("**Title Company**") which has an office located at 224 Airport Parkway, Ste. 170, San Jose, California, 95110; and Mr. Randy Romriell will be the designated escrow officer (telephone no.: (408) 557-8400, ("**Escrow Holder**"). Buyer and Seller will each provide separate escrow instructions to Title Company during Escrow in accordance with the terms and conditions of this Agreement. Buyer may obtain at Buyer's sole expense a preliminary title report for the Property from the Title Company.

4. **Deposit.**

(a) Within thirty (30) business days from the Effective Date, Buyer shall deposit immediately available funds in the amount of One Million Three Hundred Fifty Thousand Six Hundred Fifty Dollars (\$1,350,650) ("**Deposit**") into the Escrow opened with the Title Company with the Escrow Holder. If the Deposit has not been deposited into Escrow by the end of the thirtieth (30) business day from the Effective Date, either Party shall have the right to terminate this Agreement by providing written notice to the other Party after such requisite date but prior to

the Deposit being delivered into Escrow, and upon such notice of termination, a failure of Buyer to perform within five (5) business days of receipt of such written notice, the Agreement shall terminate and the Parties shall be relieved of any further obligation under this Agreement, except for the surviving obligations as stated elsewhere in this Agreement.

(b) The Deposit, including any unencumbered additional funds deposited by the Buyer in accordance with Section 4(d) of this Agreement, shall be refundable in full to Buyer if this Agreement terminates prior to the Close of Escrow, excluding Escrow fees or other costs owed to Escrow Officer or to the Title Company.

(c) At Close of Escrow, the Deposit shall be applied to the Purchase Price. Buyer may, upon delivery of the Deposit into Escrow, instruct the Escrow Holder to invest the Deposit in an interest-bearing money market or savings account with a national banking association or federally chartered savings and loan association, which interest shall accrue to the benefit of Buyer and shall be applied to the Purchase Price and closing costs at the Closing, with any remaining balance returned to Buyer at Closing. The Deposit shall be held by the Escrow Holder in accordance with the provisions of this Agreement until Agreement termination or Close of Escrow, whichever occurs sooner.

(d) In sufficient time for the Close of Escrow to occur on the Closing Date (defined in Section 3(a)), Buyer shall deposit into Escrow, in immediately available funds, in addition to the Deposit (which has already been placed into Escrow), such additional funds needed to satisfy the Purchase Price and Buyer's share of pro-rations and costs of Escrow ("**Additional Closing Funds**").

5. Inspections; "As Is" Sale.

(a) Inspections. At Buyer's sole cost and expense, Buyer shall have the right to conduct its inspection, investigation and title review (collectively, "**Inspections and Review**") of the Property and all Property Materials and Title Reports, subject to Buyer providing Seller at least 72 hours advance notice and obtaining Seller's prior reasonable consent. By accessing or entering the Property, in each instance, Buyer warrants, represents and agrees to indemnify, defend and hold harmless the Seller and each of its employees, invitees, guests, contractors, consultants, agents, officers, directors, representatives and assigns, from, for and against any and all causes of action, claims, allegations, injuries, illness, death or damages, both real and personal (collectively, "**Claims**") in any way relating to, arising from or caused by access to or entry upon the Property by Buyer or any of its employees, invitees, guests, contractors, consultants, representatives, agents, assigns, officers or directors (collectively, "**Buyer Parties**"), but excepting from the foregoing any Claims directly caused by the sole gross negligence or willful misconduct of Seller or any of its employees, contractors, consultants, representatives, agents,

assigns, officers or directors (collectively, “**Seller Parties**”). Buyer shall provide to Seller, upon Seller’s written request, copies of all Inspections, including any and all reports, studies or other written analyses.

(b) “As Is” Sale; General Release. Buyer acknowledges that it will have had an opportunity to conduct due diligence inspections of the Property and will acquire the Property in its current condition based on its due diligence inspections and reasonable inquiry. Buyer acknowledges and agrees that the Property is to be conveyed by Seller to Buyer “as is, with all faults,” and substantially in its current condition. Buyer further acknowledges and agrees that the sale of the Property to Buyer is made without any warranty or representation of any kind by Seller, either express or implied or arising by operation of law, and Seller shall have no liability with respect to the value, uses, habitability, merchantability, condition, design, operation, rents, financial condition or prospects, or fitness for purpose or use of the Property (or any part thereof), or any other aspect, portion or component of the Property, including: (i) the physical condition, nature or quality of the Property, including the quality of the soils on and under the Property and the quality of the labor and materials included in any improvements, fixtures, equipment or personal property comprising any portion of the Property; and (ii) the fitness of the Property for any particular purpose. Furthermore, Seller shall have no liability for any latent, hidden, or patent defect as to the Property. In particular, Buyer acknowledges and agrees that the Property information made available to Buyer under this Agreement (and any other information Buyer may have obtained regarding in any way any of the Property, including without limitation, its operations or its financial history or prospects from Seller or its agents, employees or other representatives) is delivered to Buyer as a courtesy, without representation or warranty as to its accuracy or completeness and not as an inducement to acquire the Property; that nothing contained in any deliveries of Property information shall constitute or be deemed to be a guarantee, representation or warranty, express or implied, in any regard as to any of the Property; and that Buyer is relying only upon the provisions of this Agreement and its own independent assessment of the Property and its prospects in determining whether to acquire the Property.

(c) Seller makes no representation or warranty whatsoever regarding the existence or availability of any information, records or materials (“**Materials**”) in Seller’s possession or control and Seller shall not be obligated to create, possess, maintain, control or provide such Materials. Buyer acknowledges and agrees that, except as otherwise provided in this Agreement: (i) any and all Materials that have been provided or made available to Buyer were made available or provided for informational purposes only and do not constitute representations or warranties of Seller of any kind; (ii) the Materials that Seller provides or makes available to Buyer in connection with the negotiation, execution and delivery of this Agreement may not be inclusive of all of the Materials in existence concerning the Property; and (iii) by providing or making available to Buyer any Materials, Seller has complied with and satisfied any obligations Seller

may have to provide Buyer with information about the Property. Buyer shall be deemed to have reviewed any and all Materials regardless of whether Buyer elects to review such Materials.

6. Conditions to Closing.

(a) Buyer's Conditions. In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Buyer of the matters specified in this Section 6(a), which conditions are solely for the benefit of Buyer and can be unilaterally waived by Buyer only:

(i) The Title Company shall be committed to issue to Buyer at the Closing an CLTA owner's policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions, in the form and with endorsements to be approved by Buyer prior to Closing ("Title Policy"). Buyer shall be obligated to proceed with Closing as long as the Title Company is committed to issue to Buyer at Closing a CLTA owner's policy of title insurance in the amount of the Purchase Price, insuring the Property is vested in Buyer subject to no exceptions other than the Permitted Exceptions. Buyer is solely responsible for paying all costs associated with obtaining a Title Policy;

(ii) There shall have been no material adverse change in the physical condition of the Property from the Effective Date through the Closing Date;

(iii) The City and the County shall have fully executed, respectively, the Conservation Easement and the Certificate of Acceptance for the Conservation Easement and shall have deposited said original into Escrow no later than fifteen (15) days before Closing;

(iv) The Buyer shall have fully executed the Conservation Easement and shall have provided the original executed Conservation Easement to County for County's deposit of this document into Escrow prior to Closing;

(v) Seller shall not be in material default of Seller's obligations under this Agreement as of the date of Closing;

(vi) Buyer shall have successfully negotiated with the Corps and deposited into Escrow, no later than fifteen (15) business days before Closing: (1) a fully executed mitigation

agreement in substantially the form of the attached **Exhibit D** (“**Mitigation Easement**”) conveying to the Corps’ designated grantee(s) a perpetual wetlands mitigation easement interest over a portion of the Property, not to exceed 16 acres, as generally depicted in the attached **Exhibit E** (the “**Mitigation Easement Area**”); (2) such other requisite documentation evidencing the Corps’ acceptance and approval of the Mitigation Easement as executed; and, (3) such other requisite documents and agreements executed and agreed upon between SCVWD and a designated third party for the management and fulfillment of SCVWD’s obligations and responsibilities set forth in the Mitigation Easement.

(b) **Seller’s Conditions**. In addition to all other conditions to the completion of the transaction described in this Agreement, Seller and Buyer agree that the Closing of the sale and purchase contemplated by this Agreement is subject to satisfaction, approval or waiver by Seller of the matters specified in this **Section 6(b)**, which conditions are solely for the benefit of Seller and can be unilaterally waived by Seller:

(i) Buyer shall not be in material default of any of Buyer’s obligations under this Agreement;

(ii) Buyer’s express representations and warranties set forth in this Agreement continue to be true, correct and unchanged in all material respects as of the date of Closing;

(iii) Seller has executed and deposited into Escrow, no later than fifteen (15) business days before Closing, a Certificate of Acceptance of the Conservation Easement that shall be generally in the form attached as **Exhibit F**.

(iv) The City shall have fully executed the Conservation Easement and a Certificate of Acceptance accepting the easement interest and shall have provided the original executed Conservation Easement and Certificate of Acceptance to County for County’s deposit of this document into Escrow prior to Closing;

(v) The Buyer shall have fully executed the Conservation Easement and shall have provided the original executed Conservation Easement to County for County’s deposit of this document into Escrow prior to Closing;

(vi) The Buyer shall have fully executed a Certificate of Acceptance for the acquisition of the Property and shall have deposited same into Escrow before Closing.

(vii) Seller has executed the Conservation Easement after both Buyer and City have executed the same and Seller shall have deposited a fully executed Conservation Easement (which may be done in counterparts) into Escrow prior to Closing. Except within the Mitigation Easement Area, the Parties acknowledge and agree that the Conservation Values shall not be

diminished, altered or subordinate to any other use of the Property by Buyer, Corps, any other department or agency, any third party or any successor or assign. Seller acknowledges and agrees that the Conservation Easement shall be subordinate and subject to the terms and conditions of the Mitigation Easement over the Mitigation Easement Area as described in the Mitigation Easement and defined in the Conservation Easement.

(viii) For the purpose of ensuring conformity to the terms and conditions of this Agreement and the Conservation Easement, as a condition of Closing, County shall have a right to review and approve the final version of the Mitigation Easement, which approval will not be unreasonably withheld or denied. County's approval will be based primarily on the impact to future trail development and connectivity, considering the City's written opinion on the same issues. For this purpose, County shall be provided a copy of the final Mitigation Easement that has been approved by the Corps at least thirty (30) calendar days prior to Closing. Prior to Closing, Buyer shall have deposited the full Purchase Price into Escrow in accordance with Section 4 herein above and such other additional sums as are necessary to Close Escrow.

(c) Exceptions to Title at Closing. Title to the Property shall be conveyed to Buyer subject to only the following exceptions (collectively, the "**Permitted Exceptions**"): (i) non-delinquent real property taxes and assessments, (ii) the standard pre-printed exceptions and exclusions contained in an ALTA extended coverage or ALTA owner's policy of title insurance, (iii) liens and encumbrances to which Buyer has granted, consented or waived, (iv) all matters that would be disclosed by a current physical inspection or survey of the Property, or that are disclosed by any survey provided to the Title Company as the basis for the issuance of an ALTA extended coverage owner's policy of title insurance, or that are actually known or reasonably should have been to Buyer, (v) applicable zoning and use laws, ordinances, rules and regulations of any municipality, township, county, state or other governmental agency or authority, (vi) liens and encumbrances caused by the acts of Buyer, the United States of America or any of Buyer's employees, agents, contractors, subcontractors, consultants, officers, directors, representatives, successors or assigns; and, (vii) upon recordation, the Conservation Easement and Mitigation Easement, which occurs at Closing.

7. Closing

(a) Closing Date. The consummation of the purchase and sale of the Property (the "**Closing**" or "**Close of Escrow**") shall take place on the Closing Date (defined below), through the Escrow established with Escrow Holder, as evidenced by recordation of the Grant Deed, the Certificates of Acceptance in the form attached as **Exhibit F**, the Mitigation Easement and the Conservation Easement in the Office of the County Recorder for the County of Santa Clara ("**Official Records**"). The "**Closing Date**" shall be June 30, 2018, or such earlier date as the

Parties can complete their obligations in accordance with this Agreement. The Closing Date may be extended only upon the mutual written consent of the Parties, which consent shall not be unreasonably withheld or denied.

(b) Seller's Closing Obligations. In sufficient time prior thereto to allow Closing to occur on the Closing Date, Seller shall cause to be delivered into the Escrow:

(i) The Grant Deed, complete with all attachments and exhibits, fully executed by Seller and all other requisite parties, with signatures notarized for recording in the Official Records, conveying to Buyer the Property, which Grant Deed shall be recorded in the Official Records at the Closing;

(ii) The Conservation Easement fully executed by City, County and Buyer notarized for recording in the Official Records, and County's and City's Certificate of Acceptance for the Conservation Easement ;

(iii) An affidavit in compliance with the Foreign Investment and Real Property Tax Act and a California Tax Withholding Form 593-C, executed by Seller (the "**Non-Foreign Status Certificate**" and "**Form 593-C**", respectively), certifying that Seller is not subject to withholding under federal or state law; and

(iv) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and an owner's affidavit reasonably required by the Title Company and reasonably acceptable to Seller to enable the Title Company to issue a Buyer-requested Title Policy to Buyer at the Closing.

(c) Buyer's Obligations at Closing. Prior to Closing, in sufficient time prior thereto to allow Closing to occur on the Closing Date, Buyer shall cause to be delivered into Escrow the following:

(i) The Certificate of Acceptance fully executed by the Buyer accepting the Grant Deed;

(ii) Buyer shall have fully executed and notarized the Conservation Easement and provided signed originals to Seller so that Seller may deposit same into Escrow.

(iii) The Mitigation Easement reviewed and approved by County pursuant to Section 6.b.viii and fully executed by SCVWD in favor of the Corps or the Corps' designated grantee(s) and such other requisite documentation evidencing acceptance by the Corps or by the

Corps' designated grantee(s) of such Mitigation Easement on behalf of the United States of America, substantially in the form of the attached Exhibit D.

(iv) The Additional Closing Funds;

(v) The Non-Foreign Status Certificate and Form 593-C, executed by Buyers, certifying that Buyer is not subject to withholding under federal or state law; and,

(vi) Such additional instruments or documents reasonably required by Escrow Holder in order to consummate the purchase and sale of the Property in accordance with the terms and conditions of this Agreement, to the extent consistent with this Agreement, including without limitation escrow instructions and any other information reasonably required by the Title Company to enable the Title Company to issue a Buyer-requested Title Policy to Buyer at the Closing and to timely Close Escrow.

(d) At Closing. On or before the Closing Date, Seller shall arrange to have a complete set of all keys (if any) to the Property, delivered to Buyer at the Property. At Closing all recordations shall be made by Escrow Holder.

(e) Possession. Possession of the Property shall be delivered to Buyer at the Closing, free and clear of all tenants and occupants (except as otherwise agreed herein), in broom clean condition, and with all furniture and personal property having been removed by Seller at Seller's cost.

(f) Prorations.

(i) All revenues and expenses of the Property, including without limitation real property taxes, special taxes, assessments (if any) shall be prorated and apportioned between Buyer and Seller as of the Closing Date, so that Seller bears all expenses with respect to the Property, and has the benefit of all income with respect to the Property, through and including the date immediately preceding the Closing Date. If any portion of the Property is affected by any assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien due and payable as part of the annual ad valorem property tax bill received for the Property, then such installment shall be prorated as of the Closing Date; and if any such assessment or other charge is not payable in installments or are not billed as part of the annual ad valorem property tax bill for the Property, shall be paid in full (if any) by Seller at the Closing. Notwithstanding the foregoing, Seller shall be solely responsible for clearing all possessory interest taxes from the Property that are due and owing by County not later than the Closing.

(ii) If any of the items to be prorated as of Closing cannot be finally determined as of Closing, the prorations shall be made at Closing based on the last available information, and post-closing adjustments between Buyer and Seller shall be made within twenty (20) days after the date that the actual amounts are determined, and if payment is not made within this twenty (20) day period the Party owing such sums shall pay interest thereon, at the rate of ten percent (10%) per annum, from date of delivery of the bill to the non-paying Party to the date of payment.

(g) Title Charges; Other Closing Costs. If this Agreement is terminated by Buyer for any reason other than Seller's material breach of this Agreement, Buyer shall pay all escrow costs billed by the Escrow Holder and Title Company. If Closing occurs as provided in this Agreement, (i) Buyer shall pay all Escrow fees and costs, including but not limited all costs and expenses related to any Title Policy issued; (ii) all recording fees (if any) for the recording of the Grant Deed and all other documents; and (iii) all other Closing costs, if any, shall be allocated between Seller and Buyer in accordance with the custom in Santa Clara County, California.

(h) Disbursement of Funds. At Closing, Escrow Holder shall disburse the Purchase Price, less Seller's share of prorations (as set out in this Agreement herein above), in immediately available funds (as directed by Seller).

(i) Delivery of Documents. Escrow Holder shall, upon the Close of Escrow, deliver all instruments and documents as follows:

Escrow Holder shall deliver to Seller all of the following:

- Copies of the recorded Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, Mitigation Easement, and, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;
- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- A copy of all other documents deposited into Escrow; and,
- The Purchase Price, less the prorations chargeable to Seller pursuant to this Agreement.

Escrow Holder shall deliver to Buyer all of the following:

- Copies of the Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, and Mitigation Easement, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such original

documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;

- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- The original Title Policy;
- A copy of all other documents deposited into Escrow; and,
- Any remaining funds deposited into Escrow by Buyer, excluding the Purchase Price and all costs and prorations that are the responsibility of Buyer pursuant to the terms of this Agreement.

Escrow Holder shall deliver to City all of the following:

- Copies of the recorded Grant Deed with all fully executed attachments and exhibits, Certificates of Acceptance, Mitigation Easement, and, executed by the applicable executing Parties and third parties, with Escrow Holder showing information of recordation of such documents in the Official Records in the foregoing order and certifying such copies as being true and complete reflections of the respective originals;
- A copy of the Non-Foreign Status Certificate, and Form 593-C from each of the Parties;
- A copy of all other documents deposited into Escrow.

8. Representations, Warranties and Covenants.

(a) Representations By Seller. Seller represents and warrants to Buyer as follows:

(i) No consent or approval is required for the execution and delivery of this Agreement by Seller or the performance by Seller of its obligations hereunder other than those already obtained by Seller. To the best of Seller's knowledge, information or belief, the Property Materials made available to Buyer are all of the Property Materials in the possession of Seller.

(ii) There shall be no outstanding contracts made by Seller for any improvements to the Property which have not been fully paid for, and Seller shall cause to be discharged and removed as an exception to Title all mechanics' and materialmen's liens directly and solely caused by any labor and material furnished to Seller prior to the Closing (other than those caused by work performed by or for Buyer's benefit).

(b) Representations By Buyer. No consent or approval is required for the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder other than those already obtained by Buyer.

9. Condemnation.

If between the date of this Agreement and the Closing Date any condemnation or eminent domain proceeding is initiated by any third party (excepting only those third parties, agencies, joint powers authority, cities, governmental agencies or departments, or special district affiliated with, with whom Buyer has contracted or who is/are under the Buyer's direction, management or control) which would result in the taking of any portion of the Property, then Buyer may terminate this Agreement by written notice to Seller. Seller shall promptly notify Buyer in writing upon receiving written notice of the commencement or occurrence of any condemnation or eminent domain proceeding affecting the Property. If such proceeding is initiated for the taking of any part of the Property, Buyer shall then notify Seller, within ten (10) business days after Buyer's receipt of Seller's notice (but in no event later than twenty-four (24) hours prior to the Closing Date), whether or not Buyer elects to terminate this Agreement. If Buyer elects not to terminate this Agreement or fails to make an election within such ten (10) day period or twenty-four (24) hours prior to the Closing Date, whichever is earlier, then Buyer shall be deemed to have elected to proceed with the Closing without any reduction in the Purchase Price, in which event Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceeding, or if such payment has been received by Seller such payment shall be credited to Buyer at the Closing. If this Agreement is terminated in accordance with this Section, then the Deposit shall be released to Buyer, and Seller and Buyer shall thereupon be released from all further obligations under this Agreement.

10. Default.

(a) Default by Buyer.

If Buyer defaults in the performance of any of its obligations hereunder or is otherwise in material breach of the terms hereof, then Seller will provide a written notice to cure to Buyer. Upon Buyer's failure to cure within ten (10) business days from issuance of said notice to cure, this Agreement shall terminate unless Seller agrees to provide Buyer additional time to cure. Upon termination, Escrow Holder shall cancel the Escrow; Seller and Buyer shall thereupon be released from their respective obligations hereunder (other than the surviving obligations); and, Escrow Holder shall return the Deposit, minus any and all costs and fees of Escrow or Title, to Buyer.

(b) Default by Seller.

If Seller defaults in the performance of its obligations hereunder or is otherwise in material breach of the terms hereof, then Buyer will provide a written ten (10) business day notice to cure

to Seller. Upon Seller's failure to cure within ten (10) days from issuance of said notice to cure, or make good faith efforts to cure if additional time is reasonably required to cure, within said ten (10) period, Buyer shall, at its election, have the right to terminate this Agreement, upon which termination Buyer's sole and exclusive right and exclusive remedy shall be the return of the Deposit. Buyer may, at its sole option, elect to grant Seller additional time to cure provided such additional time is set forth in a signed letter from Buyer to Seller and received before the expiration of the original ten (10) day notice. Upon termination, Escrow Holder shall cancel the Escrow; Seller and Buyer shall thereupon be released from their respective obligations hereunder (other than the surviving obligations); and, Escrow Holder shall return the Deposit, minus any and all costs and fees of Escrow or Title, to Buyer.

(c) Eminent Domain.

Notwithstanding the foregoing or anything to the contrary set forth in applicable law, upon termination of the Agreement pursuant to the terms set forth herein, Buyer shall have the right to pursue acquisition of the Property through its powers of eminent domain pursuant to California Code of Civil Procedure, Title 7, and Seller waives any claim that Seller may have that the terms or obligations of this Agreement preclude or prevent Buyer's exercise of any of its eminent domain authority.

11. Notice. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to County: Clerk of the Board of Supervisors
County of Santa Clara
70 West Hedding Street, East Wing
San Jose, California 95110

WITH COPIES TO:

Department of Parks and Recreation
Attn: Real Estate Division
208 Garden Hill Drive
Los Gatos, CA 95032-7669 AND

Santa Clara County Counsel's Office
Attn: County Counsel
70 W. Hedding Street, East Wing, 9th Floor
San Jose, California 95110
Phone No.: (408) 299-5900
Email: james.williams@cco.sccgov.org

If to SCVWD: Clerk of the Board of Directors
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118

WITH COPY TO:

Santa Clara Valley Water District
Office of SCVWD Counsel
5750 Almaden Expressway
San Jose, CA 95118

Any such notices shall be sent either (a) by certified mail, return receipt requested, postage prepaid in the U.S. mail, (b) by personal delivery, (c) by a nationally recognized overnight courier, (d) by telecopier, in which case notice shall be deemed delivered when the transmitting telecopier machine has confirmed that the notice has been completed or sent without error, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above, or (e) by email, provided that a copy is also sent out not later than one (1) business day thereafter by certified mail, personal delivery or overnight courier as described in (a), (b) or (c) immediately above. A Party may change its address provided above by written notice to the other Party; provided, however, that in no event shall a change of address include a P.O. Box.

12. Governing Law and Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

13. Counterparts; Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures and initials to this Agreement created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver an execution

original to this Agreement with its actual signature and initials to the other Party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party to this Agreement shall be bound by its own electronically created and/or telecopied or electronically transmitted signature and initials and shall accept the electronically created and/or telecopied or electronically transmitted signature and initials of the other Party to this Agreement.

14. Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

15. Assignability. Neither party shall assign this Agreement without the prior written consent of all parties.

16. Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

17. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

18. Submission of Agreement. The submission of this Agreement by one party to the other or their agents or attorneys for review will not be deemed an offer to sell or purchase the Property, and no agreement with respect to the purchase and sale of the Property will exist unless and until this Agreement is executed and delivered by both Seller and Buyer.

19. Real Estate Reporting Person. Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall file a Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

20. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, "business day" shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in California.

21. Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. Number and Gender; Joint and Several Liability. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

23. Negotiated Terms. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as such party under this Agreement.

24. California Public Records Act. All documents and records provided to or made available to Seller under this Agreement become the property of the Seller, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted to Seller, and Buyer expressly claims that such information falls within one or more CPRA exemptions, Buyer must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the confidential information. In the event of a request for such information, the Seller will make reasonable efforts to provide notice to Buyer prior to such disclosure. If Buyer believes that any requested documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before Seller's deadline to respond to the CPRA request. If Buyer fails to obtain such a remedy before the Seller responds to the CPRA request, Seller will disclose the requested information and shall not be liable or responsible for such disclosure.

25. Conflict of Interest. Buyer shall ensure that Buyer, its employees, agents and representatives, comply with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the

regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Agreement and is grounds for immediate termination of this Agreement by the Seller. A violation of Government Code 1090 may make this Agreement void on its face. In accepting this Agreement, Buyer covenants, warrants, represents and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Buyer further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest.

26. Relationship of Parties. The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the Parties as affiliates, joint-venturers, partners, associations, master-servant, agents, representatives, a joint enterprise, employer-employee, lender-borrower or contractor. Buyer shall have no authority to employ any person as employee, agent or representative on behalf of Seller for any purpose. Neither Buyer nor any person using or involved in or participating in any actions or inactions relating to the Agreement, or the Property shall be deemed an affiliate, employee, representative or agent of Seller, nor shall any such person or entity represent himself, herself or itself to others as an employee, affiliate, agent or representative of Seller.

27. No Third Party Rights. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of or to this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatsoever.

28. OFAC. Buyer represents and warrants to Seller that: (i) Buyer is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Buyer is not entering into this Agreement, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

29. Non-Discrimination. Buyer shall comply with all applicable Federal, State and local laws and regulations including the County of Santa Clara's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; The

Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Sections 12900 et seq.); California Labor Code sections 1101 and 1102. Buyer shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organization affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Buyer discriminate in the fulfillment of any of the Agreement terms because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

30. Flood Hazard Zone. Buyer acknowledges that the Property is located in an area that the Department of Housing and Urban Development has found to have special flood hazards. Pursuant to the National Flood Insurance Program, Buyer may be required to purchase flood insurance in order to obtain a loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the United States government. Buyer shall have sole responsibility to determine whether the Property is located in an area that is subject to the National Flood Insurance Program.

31. Notice Regarding Gas and Hazardous Liquid Transmission Pipelines. This notice is being provided simply to inform Buyer that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System ("NPMS") Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov>. To seek further information about possible transmission pipelines near the Property, Buyer may contact Buyer's local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP code and county on the NPMS Internet Web site.

32. Headings. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement or in any way affect this Agreement. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

33. No Permitted Use of Santa Clara County Name. Except as allowed herein or by another written agreement entered into by and between the Parties, Buyer shall not publicize or use, or

allow anyone else to use, the name, trade name, trade dress, seal, logo or other proprietary information of Seller in any manner.

34. Surviving Obligations. Those provisions which by their nature should survive termination, expiration or cancellation of this Agreement, shall so survive, including but not limited to Sections 5.b, 5.c, and 9 through 34, inclusive.

IN WITNESS WHEREOF, effective as of the last date signed by the Parties below ("**Effective Date**"), the Parties hereto have executed this Agreement as follows:

BUYER:

SANTA CLARA VALLEY WATER
DISTRICT, A Special District of the State of
California

NORMA J. CAMACHO
Chief Executive Officer

Date: _____

SELLER:

COUNTY OF SANTA CLARA, A
Political Subdivision of the State of
California

S. JOSEPH SIMITIAN, President
Board of Supervisors

Date: _____

ATTEST:

Megan Doyle, Clerk of the
Board of Supervisors

Date: _____

Approved as to form and legality:

DISTRICT COUNSEL,

Brian Hopper
Senior Assistant District Counsel

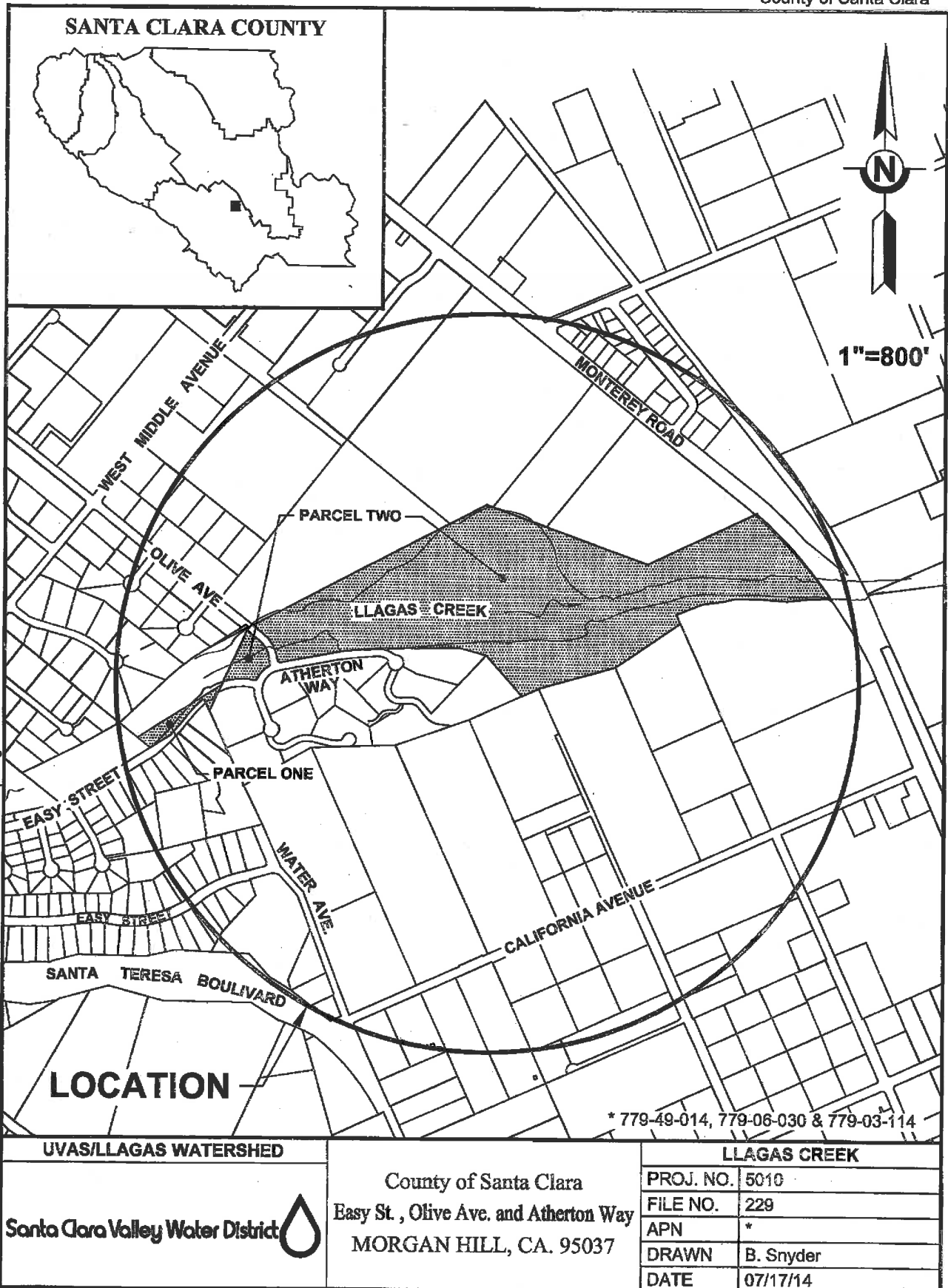
Approved as to form and legality:

COUNTY COUNSEL, SANTA CLARA
COUNTY

By: Shirley R. Edwards,
Deputy County Counsel

EXHIBIT A
(to Purchase and Sale Agreement)

MAP AND LEGAL DESCRIPTION OF PROPERTY



SCVWD C:\ROW 2013\Uvas\2014-174\Location Maps\5010 229 Location Map.dwg

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: DOC. 7403031 & DOC. 7403032

Checked by: _____ Date: _____

PROJECT: LLAGAS CREEK
PROPERTY: COUNTY OF SANTA CLARA

FILE NO.: 5010-229

All that certain real property situate in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE

Being that portion of LOT 52 as conveyed from Walter Von Tagen and Verne D. Freeman and Joanne O. Freeman, his wife to the County of Santa Clara per Document 7403032, Santa Clara County Records described as follows:

LOT 52, as said lot is shown upon that certain Map entitled, "Tract No. 5448, Amberwood Glen Unit No. 2" which Map was filed for record on June 13, 1974 in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records described as follows:

EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to the City of Morgan Hill, recorded February 2, 1976 in Book B849 of Official Records, page 25, as follows:

BEGINNING at the most Westerly corner of Lot 52, said corner also being a common corner with Lot 41 as said Lots and corners are shown on the Map entitled "Tract No. 5448, Amberwood Glen Unit No. 2" filed in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records; thence South 51° 40' East 147.44 feet; thence North 57° 20' 30" East 628.33 feet; thence North 24° 26' 42" East 407.80 feet; thence South 62° 11' 31" West 224.91 feet; thence tangent to the last course, along a curve to the left an arc distance of 362.67 feet, said curve having a central angle of 15° 40' 58" and a radius of 1325.00 feet; thence tangent to the last curve, South 46° 30' 33" West 407.53 feet; thence along a curve to the right an arc distance of 33.87 feet, said curve having a central angle of 2° 21' 07" and a radius of 825.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to Sunnybrook Ranch, a limited partnership, recorded June 9, 1976 in Book C071 of Official Records, page 423, as follows:

BEGINNING at the most northeastern corner of Parcel 3 as said parcel is shown on the Parcel Map filed in Book 326 of Maps, at page 42, Santa Clara County Records; thence South 56° 58' 35" West, 288.84 feet; thence from a tangent which bears North 42° 54' 23" East, along a curve to the left, an arc distance of 122.22 feet; said curve having a radius of 1000.00 feet and a central angle of 7° 00' 10"; thence tangent to the last curve along a curve to the right an arc distance of 192.08 feet, said curve having a radius of 1000.00 feet and a central angle of 11° 00' 19"; thence South 25° 03' 44" East, 89.21 feet to the point of beginning.

Containing 0.913 acre of land, more or less. APN's: 779-03-114

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 5448 filed in Book 341 of Maps, at pages 46, 47 and 48, filed in the office of the Recorder, County of Santa Clara, State of California.

PARCEL TWO

Being that portion of Parcels 1, 2, and 3 as conveyed from Verne D. Freeman and Joanne O. Freeman et al to the County of Santa Clara per Document 7403031 described as follows:

Being all of Parcels 1, 2, and 3 as shown on Parcel Map recorded in book 432 of Maps at page 29, Santa Clara County Records described as follows:

Excepting therefrom a parcel of land described as follows:

Beginning at an iron pipe at the Northwestern line of Parcel 3 at the intersection with the centerline of Olive Avenue as shown on said map and running thence along said Northwestern line North 61° 50' 14" East 27.35 feet; thence South 52° 05' 23" East 93.21; thence along a tangent curve to the right having a radius of 225.00 feet and a central angle of 41° 06' 14", a distance of 161.42 feet; thence South 10° 59' 09" East 27.83 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 90° a distance of 31.42 feet; thence North 79° 00' 51" East 413.52 feet, and North 89° 59' 59" East 203.85 feet; thence along a tangent curve to the right, having a radius of 155 feet and a central angle of 7° 32' 32"; a distance of 20.40 feet; thence North 88° 45' 15" East 511.76 feet, South 75° 16' 02" East 174.74 feet, and South 41° 39' 22" East 346.11 feet to a point in the Southeasterly line of Parcel 2; thence along said Southeasterly line, South 64° 58' 03" West 370.00 to a 3/4" iron pipe, South 69° 49' 09" West 496.66 feet to an old 2" x 3" stake, and South 87° 47' 33" West 536.63 feet to a 3/4" iron pipe at the corner common to Parcels 2 and 3; thence along the Southeasterly line of Parcel 3, South 59° 40' 07" West 497.82 feet to 3/4 iron pipe at the most Southerly corner of Parcel 3; thence along the Southwesterly and Northwestern line of Parcel 3, North 25° 05' 14" West 525.25 feet and North 23° 59' 11" East 207.43 feet; thence along a curve to the right from a tangent bearing of North 71° 20' 24" East, having a radius of 380.00 feet and a central angle of 29° 26' 02", a distance of 195.21 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 75° 11' 02" a distance of 26.24 feet; thence along a tangent curve to the right, having a radius of 185.00 feet and a central angle of 33° 27' 30" a distance of 108.03 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 70° 02' 02", a distance of 24.45 feet; thence North 10° 59' 09" West 40.15 feet; thence along a tangent curve to the left, having a radius of 175.00 feet and a central angle of 41° 06' 14" a distance of 125.55 feet; thence North 52° 05' 23" West 98.10 feet to the Northwestern line of Parcel 3; thence along said Northwestern line North 23° 59' 11" East 25.76 feet to the point of beginning.

Containing 52.019 acres of land, more or less. APN's: 779-06-030 and 779-49-014

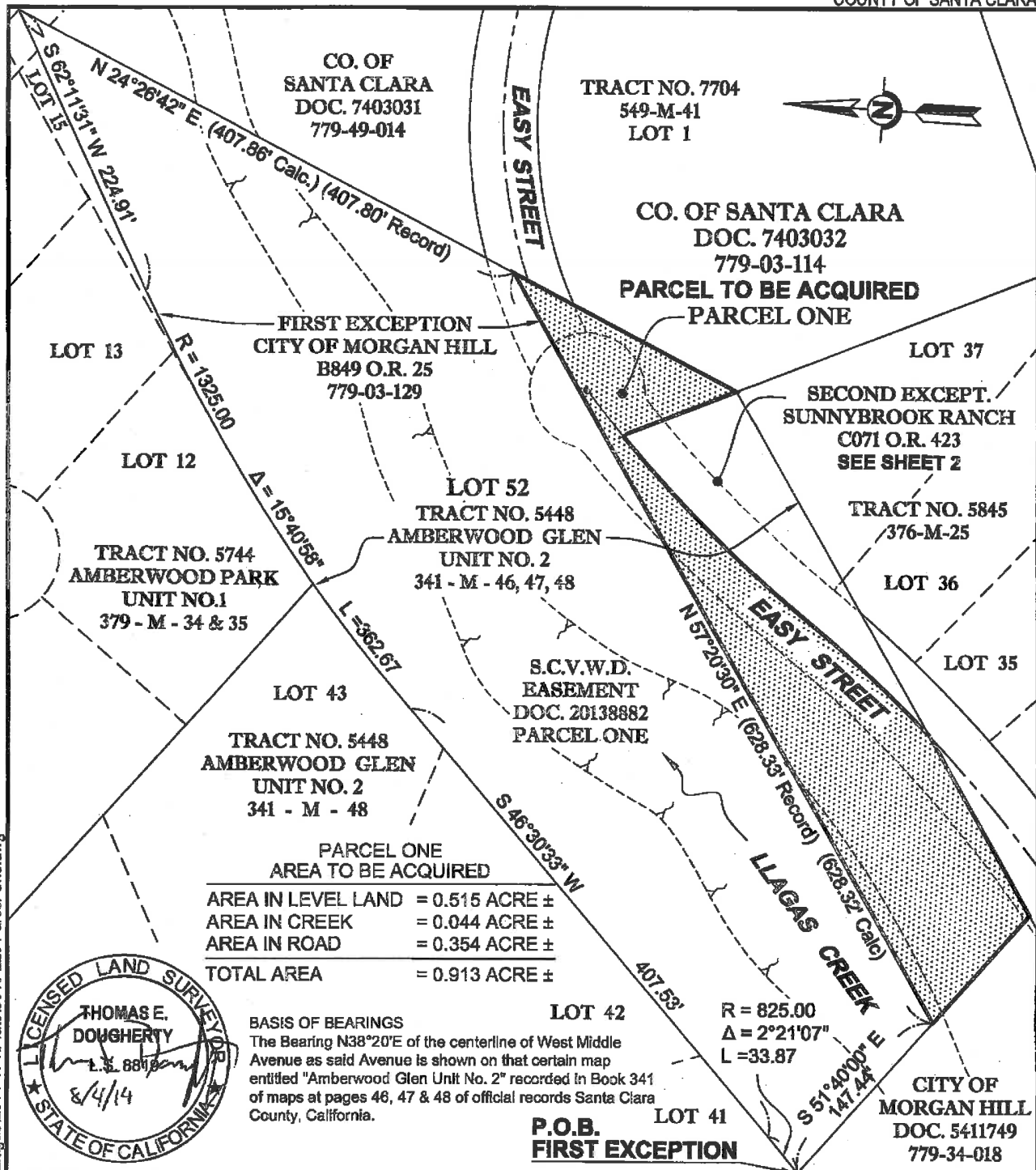
BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 7704 filed in Book 549 of Maps, at pages 41, 42 and 43, filed in the office of the Recorder, County of Santa Clara, State of California.

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


Thomas E. Dougherty L. S. 8819

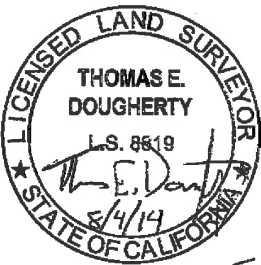
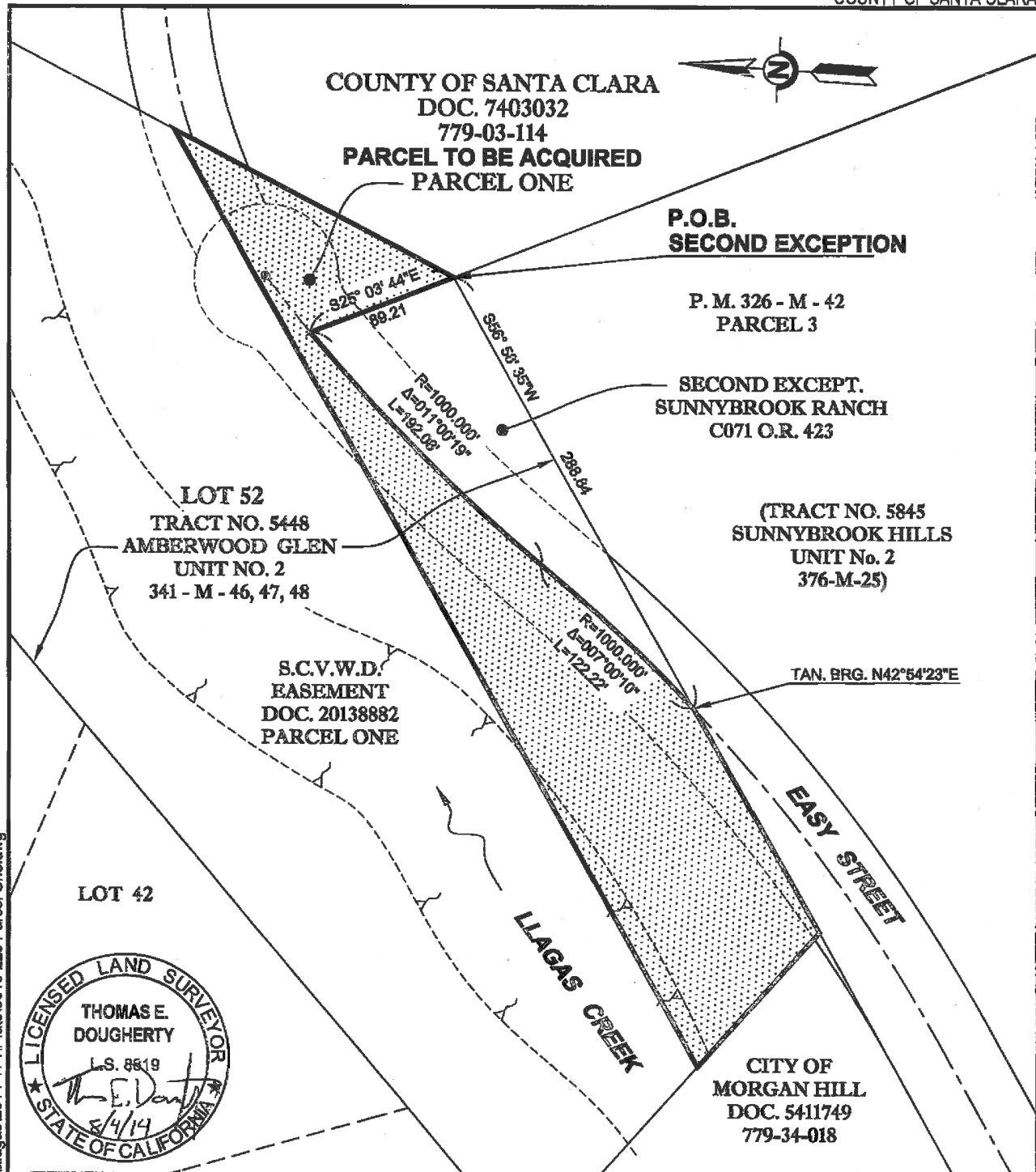
8/4/14
Date



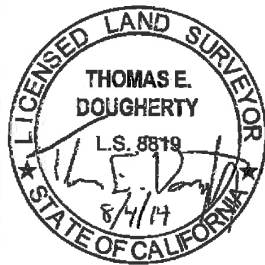


SCVWD C:\ROW 2013\Llagas\2014-174\Plats\15010-229 Parcel One.dwg

Santa Clara Valley Water District			SCALE: 1" = 100'		PROJ. NO. 5010
					FILE NO. 229
					APN 779-03-114
REV. 1	APPR.	DATE	DESCRIPTION		TITLE REPORT NO. 13-51058087-B-EB
2					DRAWN B. Snyder
					DATE 07/16/14



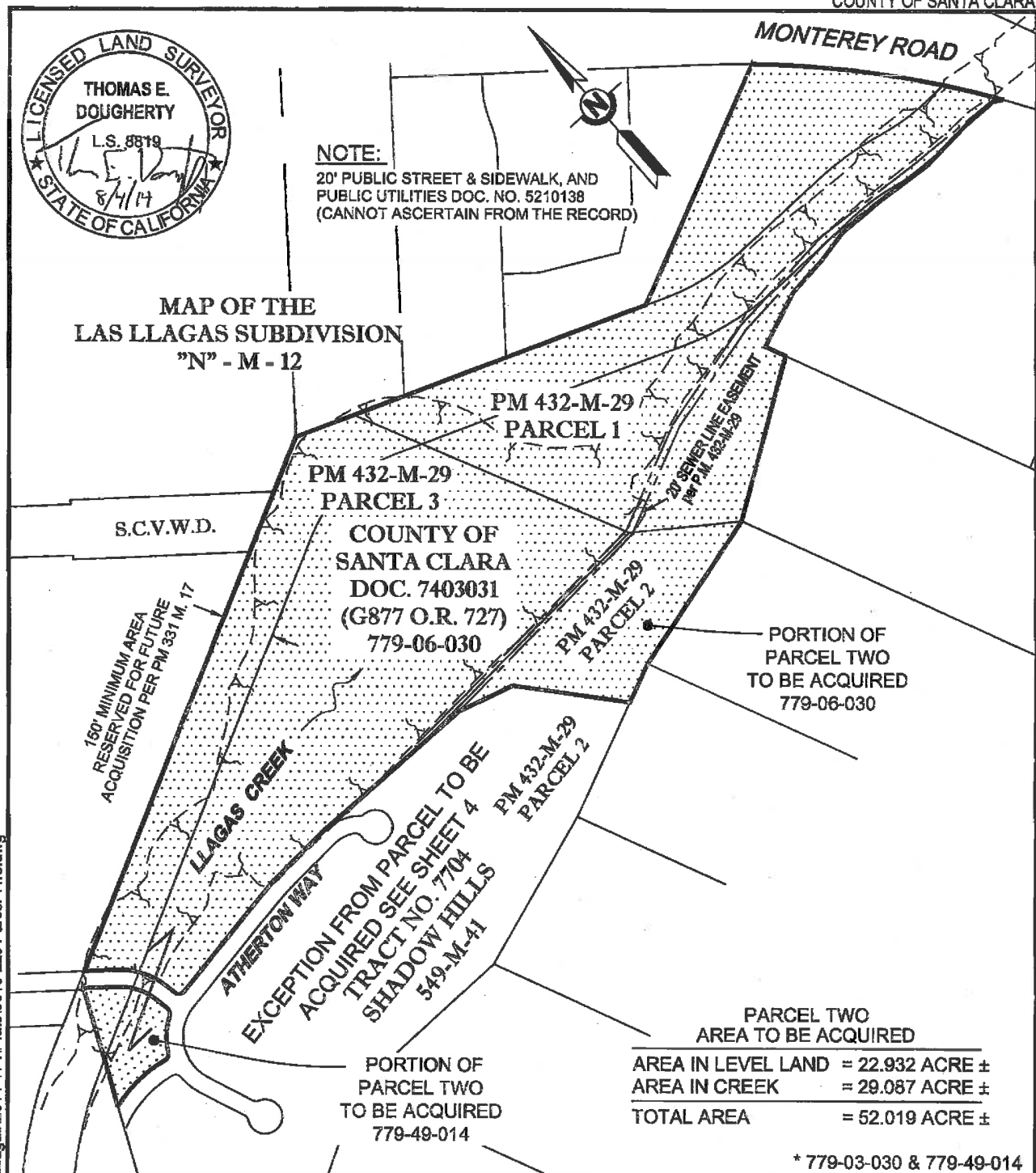
Santa Clara Valley Water District			SCALE: 1" = 80'	PROJ. NO. 5010
				FILE NO. 229
				APN 779-03-114
				TITLE REPORT NO. 13-51058087-B-EB
				DRAWN B. Snyder
				DATE 07/16/14
REV.	APPR.	DATE	DESCRIPTION	
1				
2				



NOTE:

20' PUBLIC STREET & SIDEWALK, AND
PUBLIC UTILITIES DOC. NO. 5210138
(CANNOT ASCERTAIN FROM THE RECORD)

**MAP OF THE
LAS LLAGAS SUBDIVISION
"N" - M - 12**



**PARCEL TWO
AREA TO BE ACQUIRED**

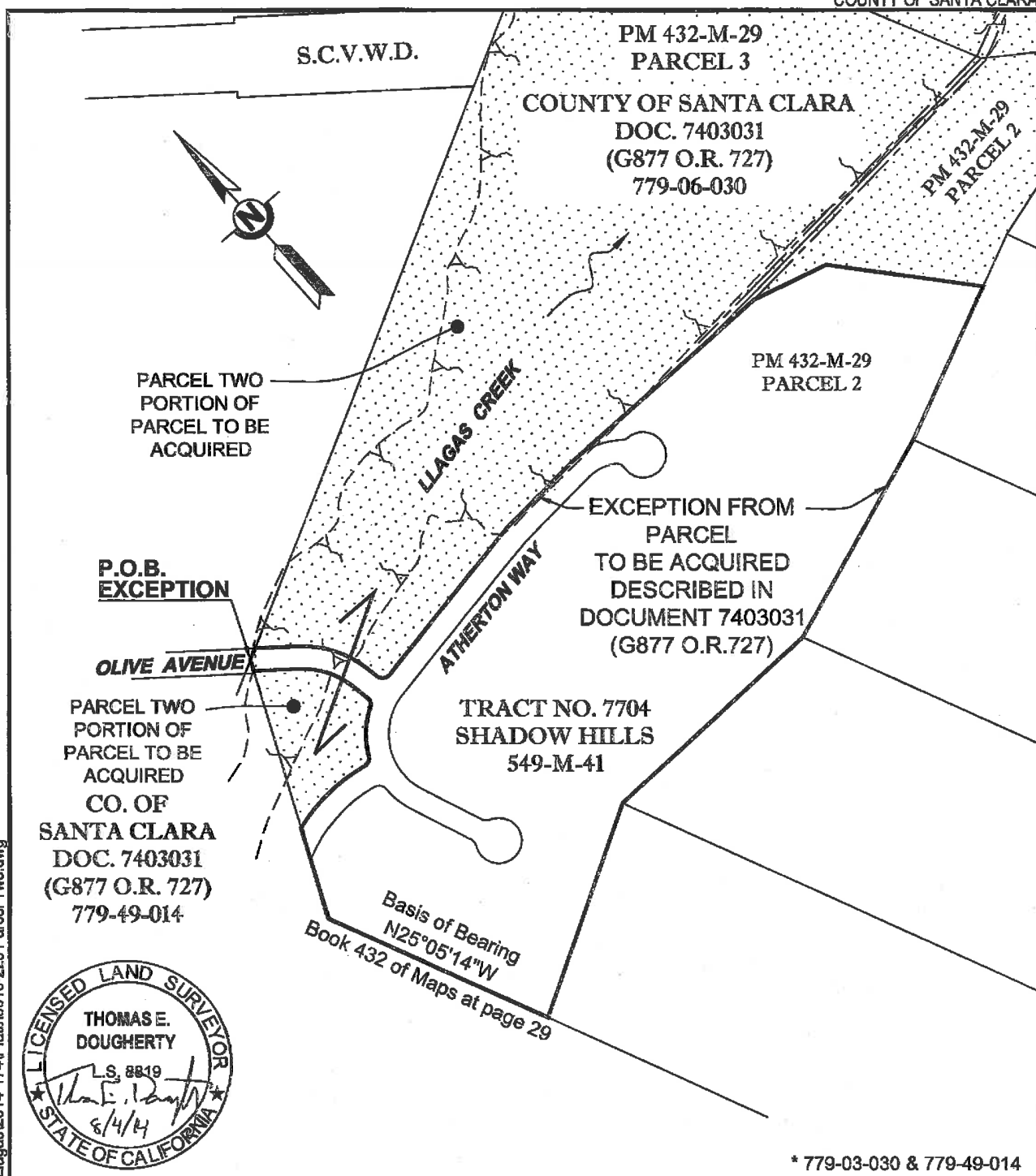
AREA IN LEVEL LAND = 22.932 ACRE ±
AREA IN CREEK = 29.087 ACRE ±
TOTAL AREA = 52.019 ACRE ±

* 779-03-030 & 779-49-014

Santa Clara Valley Water District

SCALE: 1" = 400'

REV.	APPR.	DATE	DESCRIPTION	PROJ. NO.	26174051
1		1/14	CHANGE TITLE REPORT NO.	FILE NO.	5010-229 TWO
2		7/14	Add property - update PTR (B. Snyder)	APN	*
				TITLE REPORT NO.	13-51058087-B-EB
				DRAWN	K. Comerar
				DATE	06/20/13



* 779-03-030 & 779-49-014

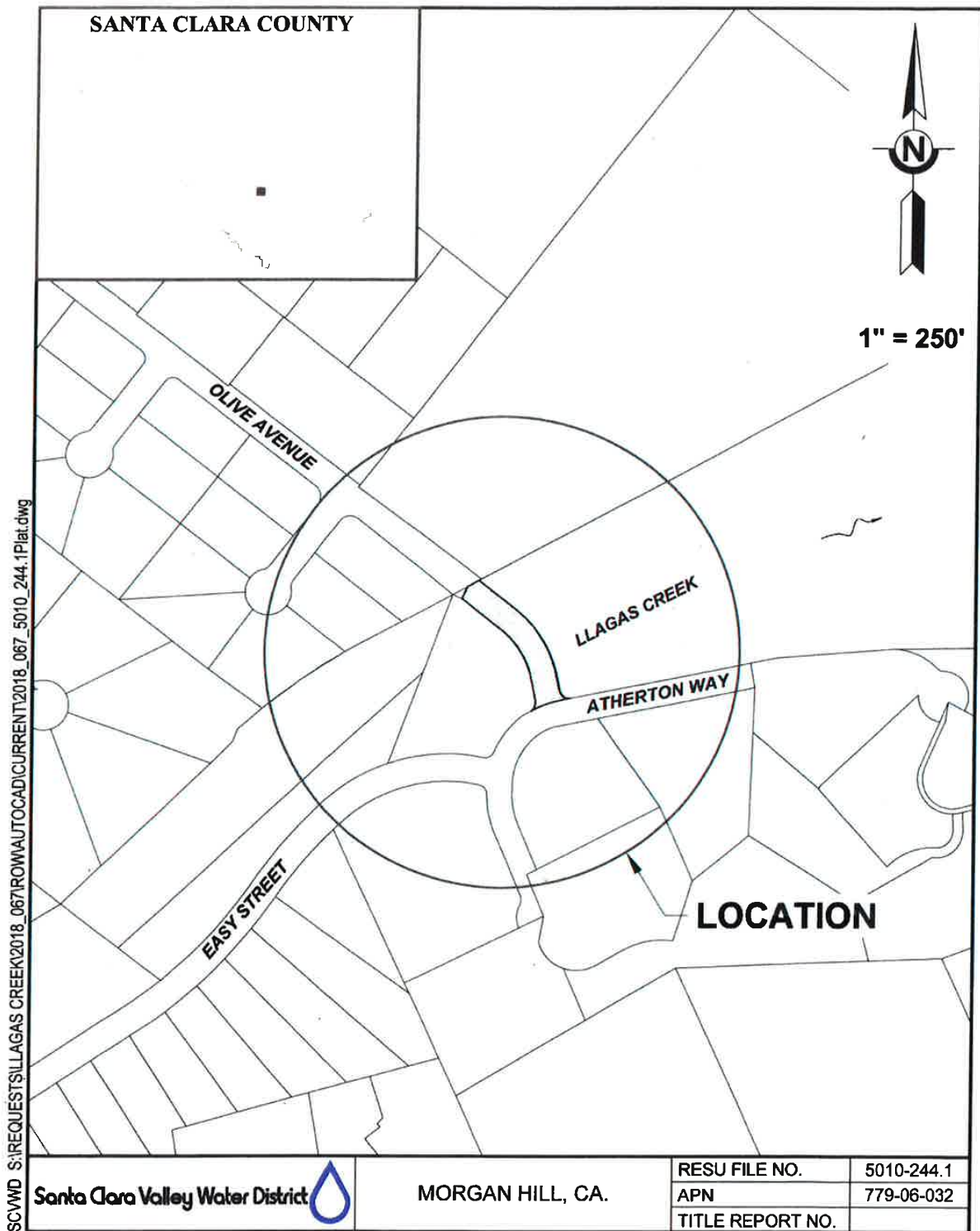
Santa Clara Valley Water District

SCALE: 1" = 300'

			PROJ. NO.	26174051
			FILE NO.	5010-229
			APN	779-06-030
			TITLE REPORT NO.	13-51058087-B-EB
REV.	APPR.	DATE	DESCRIPTION	DRAWN
1		1/14	CHANGE TITLE REPORT NO.	K. Comerar
2		7/14	Add Parcel - update PTR	DATE
				06/20/13

EXHIBIT B
(to Purchase and Sale Agreement)

LEGAL DESCRIPTION OF OLIVE STREET CROSSING



SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-244.1


ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS AS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED ON NOVEMBER 4, 2014 AS DOCUMENT NUMBER 22760059, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

CONTAINING 0.339 ACRE OF LAND, MORE OR LESS.

SURVEYOR'S STATEMENT:

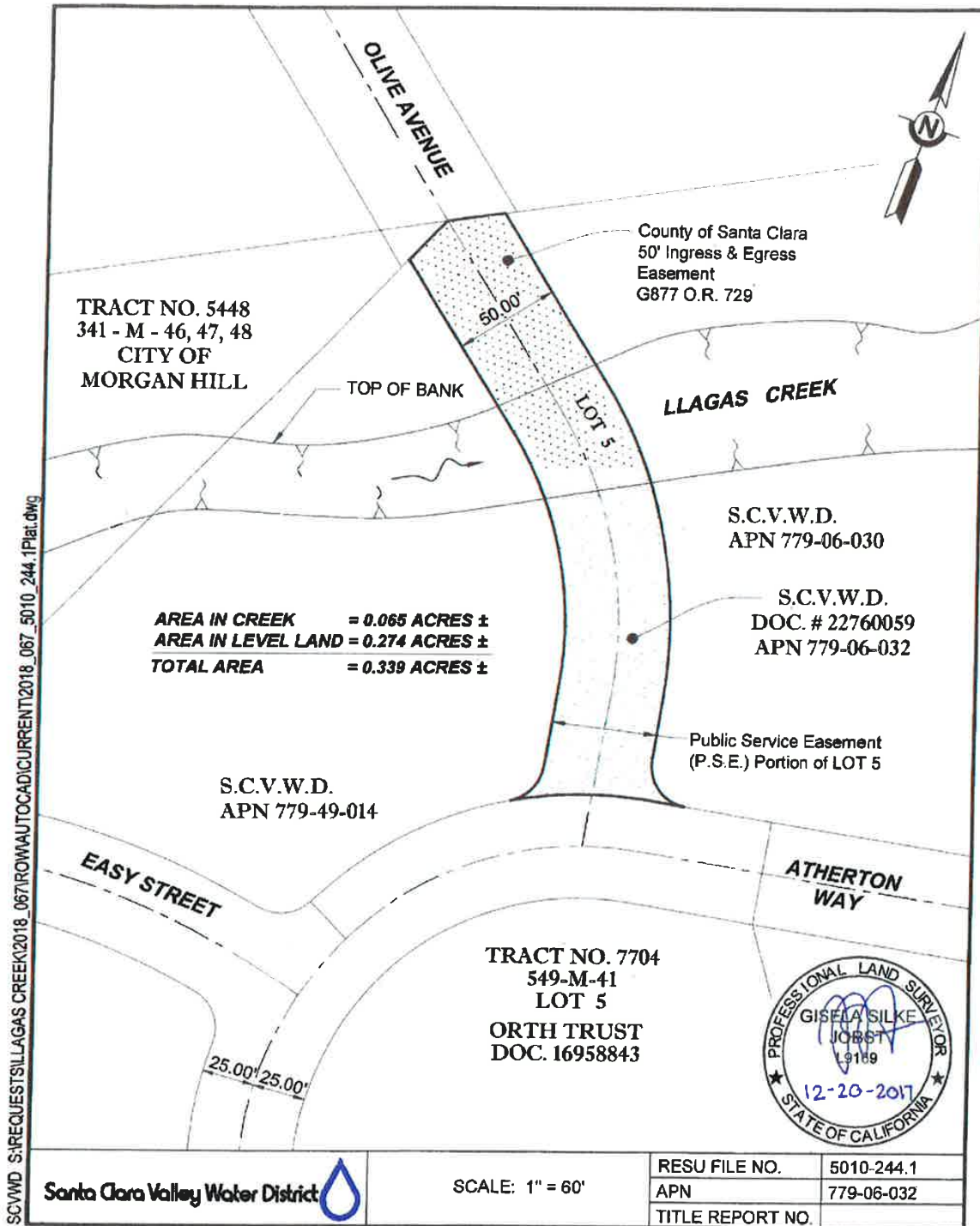
THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.



GISELA SILKE JOBST, L9169

12-20-2017
Date





SHEET 1 OF 1

EXHIBIT C
(to Purchase and Sale Agreement)
FORM OF GRANT DEED

EXHIBIT C

FORM OF GRANT DEED

RECORD WITHOUT FEE UNDER CALIFORNIA
GOVERNMENT CODE SECTIONS 27383 AND 6103
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

REAL ESTATE SERVICES UNIT
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

MAIL TAX STATEMENTS TO: Same as above

Space above this Line for Recorder's Use
A.P.N. Nos. 779-03-114; 779-06-030; 779-49-014
Transfer is exempt from documentary transfer tax pursuant to R&T Code Section 11922

District File: 5010-229

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the County of Santa Clara, a political subdivision of the state of California ("Grantor"), hereby GRANTS to the Santa Clara Valley Water District, a Special District of the State of California ("Grantee"), all of its right, title, fee, and interest in and to that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described on Exhibit 1 attached hereto. Recorded contemporaneously with this Grant Deed is the Conservation Easement (Exhibit 2) as part of the consideration for this Grant Deed.

In Witness Whereof, Grantor has caused this instrument to be executed on _____, _____.

GRANTOR: County of Santa Clara,
a political subdivision of the State of California

By:

Its:

ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA } SS

On this ____ day of _____, in the year 20____, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Trustee(s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))



CERTIFICATE OF CONSENT AND ACCEPTANCE

This is to certify that the interest in real property conveyed by the attached Deed or Grant to the Santa Clara Valley Water District, also referred to herein as the Grantee, is hereby accepted by the undersigned duly authorized agent on behalf of the Board of Directors of said Santa Clara Valley Water District, pursuant to authority conferred by Resolution No. 14-79 of said Board of Directors adopted on the 9th day of September 2014, and the Grantee consents to recordation thereof by its said duly authorized agent.

Dated: _____, 20__

Santa Clara Valley Water District

By: _____
Chief Executive Officer/Clerk of the Board of Directors
(Strike out inapplicable one)

EXHIBIT D
(to Purchase and Sale Agreement)
DRAFT FORM OF MITIGATION EASEMENT

PLEASE NOTE: The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum.
(Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[Fill in Grantee Name/Address] Grantee Name Grantee Address City, State ZIP

Attn: _____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED [Insert Bank Name]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [insert full legal name(s) of Grantor: _____] ("Grantor"), in favor of [insert Grantee's full legal name: _____] [if CDFW is Grantee insert: the State of California] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [insert City name], County of [insert County name], State of California, and designated Assessor's Parcel Number(s) [insert Assessor's Parcel Number(s)] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [specify listed and sensitive plant and/or animal species] and contain [list habitats; native and/or non-native], [include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the "Bank Property Conservation Values" of the Bank Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes

pursuant to California Civil Code Section 815.3, Fish and Wildlife Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. *[Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI]*. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. *[Use this version of Recital F when qualified nonprofit organization is Grantee]*. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[Use this version of Recital F when governmental entity is Grantee]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. *[Modify this recital as appropriate when CDFW, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI]*. This Conservation Easement is granted pursuant to the *[insert the appropriate term: Mitigation Bank Enabling Instrument (the "BEI") or Conservation Bank Enabling Instrument (the "CBEI")]*, by and between *[insert Bank Sponsor name(s)]*, *[insert Bank Property Owner name(s)]*, and *[insert Region name]* CDFW, CDFW Tracking No. *[insert number]*, the *[insert Field Office name]* of the USFWS, USFWS File No. *[insert number]*, the *[insert District name]* District of USACE, USACE File No. *[insert number]*, and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the *[insert: BEI or CBEI]*. *[Remove reference to any agency that is not a party to the BEI or CBEI]* CDFW, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the *[insert: BEI or CBEI]*, the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the *[insert: BEI or CBEI]*, the Development

Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [*insert: BEI or CBEI*], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [*insert: BEI or CBEI*], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Bank Property Conservation Values. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Bank Property Conservation Values.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [*insert: BEI or CBEI*], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.

(c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Bank Property Conservation Values shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(c) Agricultural activity of any kind [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*] except grazing for vegetation management as specifically provided in the [*specify: Development Plan or Management Plan*].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [*include the following language only if the Development Plan or Management Plan specifies such an exception:*]; and except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Bank Property Conservation Values or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [insert: BEI or CBEI], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Bank Property Conservation Values; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Bank Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [*insert if State of California is Grantee:* CDFW and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [*insert: BEI or CBEI*], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) [Add if nonprofit organization is Grantee] Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the [insert: BEI or CBEI], the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [insert if CDFW or another government entity is Grantee: , including permits and approvals required from Grantee acting in its regulatory capacity], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with

satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party [*insert if CDFW is grantee: or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding*].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of the Bank Property Conservation Values, [*include this phrase only if there are jurisdictional*

wetlands: including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[*Use the appropriate paragraph:*]

[*If CDFW or other state agency is Grantee:*] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Wildlife Code Section 1348.3.

[*All other Grantees:*] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [*insert: BEI or CBEI*], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
[Grantee address]
Attn: _____

To Grantee: *[insert the appropriate Grantee information:]*

[Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[Remove/modify the following blocks as appropriate when CDFW or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To CDFW: [Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
[Field Office name] Field Office
[FIELD OFFICE ADDRESS]
Attn: Field Supervisor

[Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* *[add if Grantee is nonprofit organization: and Government Code Section 65965]*. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [*insert: BEI or CBEI*], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other

failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [add if CDFW is Grantee: or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [insert: BEI or CBEI], [*choose applicable statement*: there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement *or* the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Bank Property Conservation Values. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [*include the agencies that will be third-party beneficiaries*: CDFW, USFWS, USACE, and USEPA] (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the [*insert: BEI or CBEI*] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [*Notarization Required*] Approved as to form:

[*Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.*]

BY: _____
General Counsel

State of California

NAME: _____
_ Department of Fish and Wildlife

TITLE: _____ BY: _____

[*Insert General Counsel Representative*]

General Counsel
DATE:

CA PDT CE Template - March 3, 2010

Exhibit A
(to Exhibit D of Purchase and Sale Agreement)
Legal Description and Surveyed Plat
of Mitigation Easement

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORTHWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

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THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

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THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE **POINT OF BEGINNING**.

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

SURVEYOR'S STATEMENT:

THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.



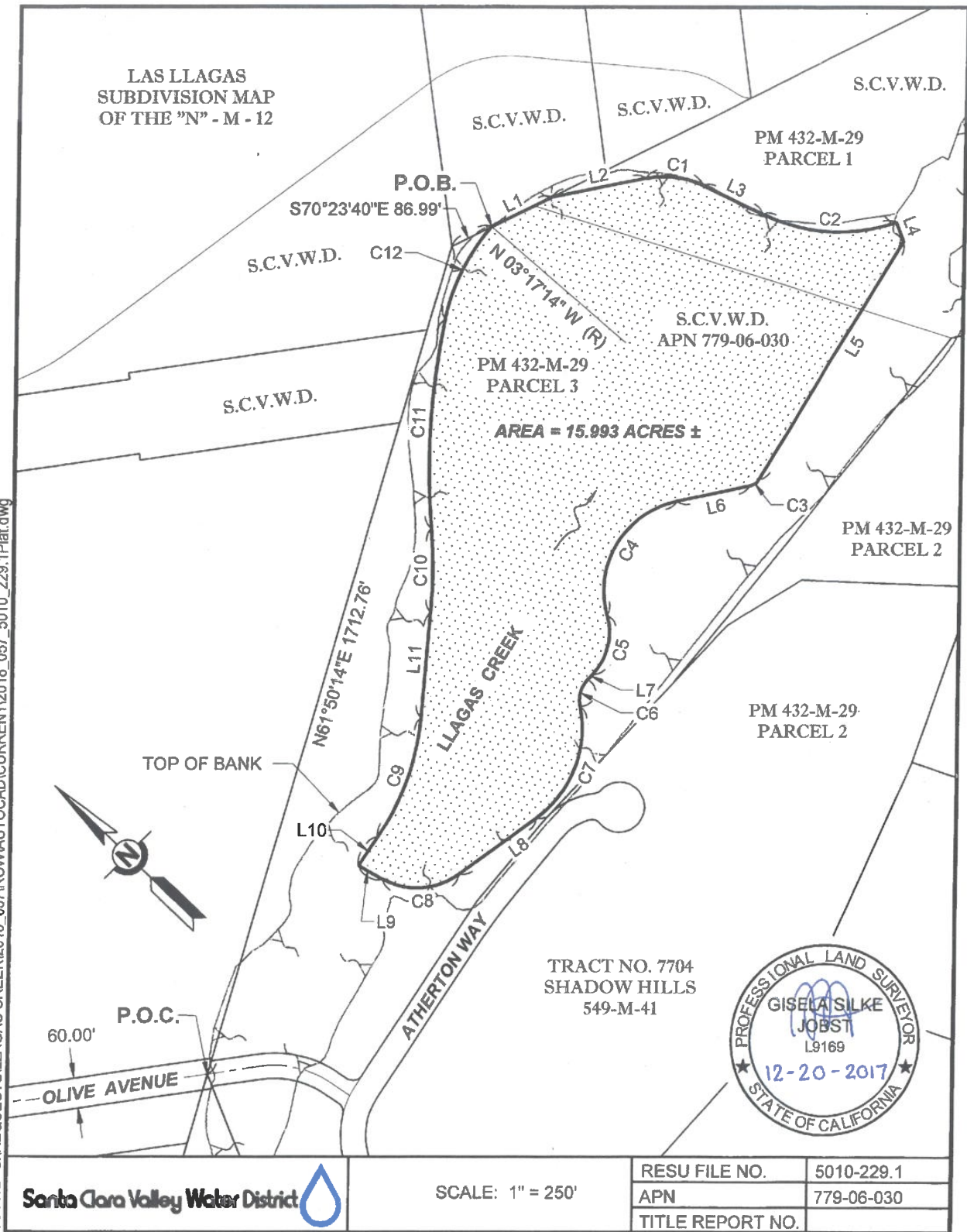
GISELA SILKE JOBST, L9169

12-20-2017
Date



LAS LLAGAS
SUBDIVISION MAP
OF THE "N" - M - 12

SCVWD S:\REQUESTS\ILLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1\Plat.dwg



SHEET 1 OF 2

SCVWD S:\REQUESTS\LAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1\Plat.dwg

Line Table		
Line #	Direction	Length
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L2	S55°08'06"E	189.44'
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C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

Santa Clara Valley Water District



SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

EXHIBIT E
(to Purchase and Sale Agreement)

MITIGATION EASEMENT AREA

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-229.1

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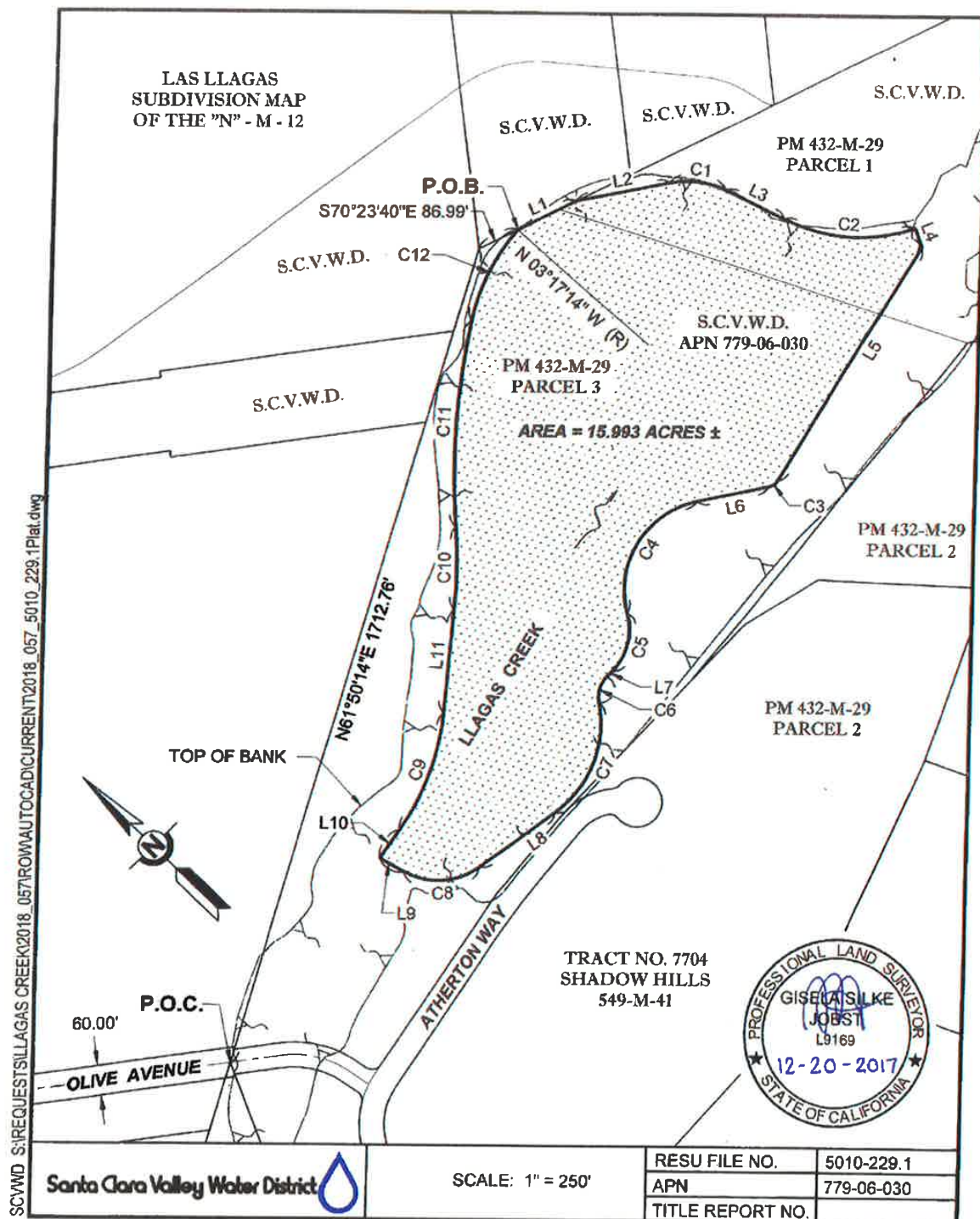
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GISELA SILKE JOBST, L9169

12-20-2017
Date





SHEET 1 OF 2

SCVWD S:\REQUESTS\LAGAS CREEK\2018_057\ROW\AUTOCURRENT\2018_057_5010_229.1\Plat.dwg

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SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

EXHIBIT F
(to Purchase And Sale Agreement)
CERTIFICATE OF ACCEPTANCE

**Certificate of Acceptance by Grantee
(Government Code Section 27281).**

In accordance with Government Code Sec. 27281, this is to certify that the interest in real property conveyed by [Insert name of property owner(s)], in the foregoing Conservation Easement Agreement to the County of Santa Clara, a political subdivision of the State of California, is hereby accepted pursuant to authority delegated by resolution of the Board of Supervisors of the County of Santa Clara on [Insert date of Director signature], and the County consents to the recordation thereof by its duly authorized officer.

By: _____

_____, Director
Parks and Recreation Department

APPROVED AS TO FORM AND LEGALITY:

_____, Deputy County Counsel

[NOTE: DIRECTOR'S SIGNATURE MUST BE NOTARIZED AS SEPARATE ATTACHMENT]

City of Morgan Hill to insert their standard
“Certificate of Acceptance by Grantee”

EXHIBIT G
CONSERVATION EASEMENT
(follows on next page)

RECORDING REQUESTED BY:

County of Santa Clara

WHEN RECORDED, RETURN TO:

County of Santa Clara, Parks and Recreation
Department
Real Estate Services
298 Garden Hill Drive
Los Gatos, CA 95032

TO BE RECORDED WITHOUT FEE AS PER
GOVERNMENT CODE 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN's: 779-03-114, 779-06-030, 779-49-014, 779-06-032

District Files: 5010-229.1; 5010-244.1

CONSERVATION EASEMENT AGREEMENT

Parties: Grantor: Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California ("**Grantor**" or "**SCVWD**").

Grantee: The County of Santa Clara, a political subdivision of the State of California ("**Grantee**", "**County**" or "**County of Santa Clara**"); and,

Grantee: City of Morgan Hill, a municipal corporation of the State of California ("**Grantee**", "**City**" or "**City of Morgan Hill**"). Collectively, the City and County are referred to herein interchangeably as "**Grantee**" or "**Grantees**".

Subject The "**Property**" consists collectively of both:

Property: A. That certain real property commonly known as Lake Silveira, located in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 52.932 acres, as more particularly described in Attachment 1 attached hereto and incorporated herein ("**Lake Silveira**"); and

B. That certain real property commonly known as the SCVWD Link Property, located in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately 14,791 square feet, as more particularly described in Attachment 2 attached hereto and incorporated herein (the "**Olive Street Crossing**").

Conservation This Conservation Easement preserves in perpetuity the "**Conservation Values**"

Conservation Easement By and Among
SCVWD, City of Morgan Hill and
County of Santa Clara – Lake Silveira

- Easement** which are the park purposes of trail connectivity through linkage of this site to the regional system of trails within the geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and open space preservation consistent with the 1995 Countywide Trails Master Plan, as amended from time to time.
- Mitigation Easement** The Mitigation Easement (**Attachment 3**) is entered into between SCVWD and the United States by and through the United States Army Corps of Engineers. The easement will ensure that the mitigation activities associated with the Upper Llagas Creek Flood Protection Project, Project #26174052 (“**Flood Protection Project**”) will be retained forever in its natural, restored, or enhanced condition. The area of mitigation to be covered by the Mitigation Easement shall be for the purpose of preservation, restoration and enhancement of native species and their habitats implemented in accordance with the Flood Protection Project. The mitigation easement area covered by the Mitigation Easement shall be comprised of not more than 16 acres within the Property as reflected in **Attachment 3-A** (the “**Mitigation Easement Area**”) as more fully set out in exhibits and/or attachments to the final executed Mitigation Easement, and, with respect to the Mitigation Easement Area, the Conservation Easement shall be subordinate to the Mitigation Easement.
- Easement Area:** The “**Conservation Easement Area**” consists of that portion of the Property described on **Attachments 1 and 2** attached hereto and incorporated herein.
- Agreed:** By execution of this Conservation Easement (“**Conservation Easement**”), and in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code *Section 815 et seq.*, Grantor hereby voluntarily grants and conveys to Grantees and each of their respective successors and assigns, and Grantees hereby accept, this Conservation Easement forever in, on, over and across the Conservation Easement Area, subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Conservation Easement Area; and the parties agree to all of the foregoing and as follows:

RECITALS

A. Grantor is Owner. Grantor represents, warrants and agrees that Grantor is the sole owner, in fee title, of the Property; and,

B. Purpose of Easement. It is the intention of the Parties to protect the Conservation Easement Area in perpetuity to serve the Conservation Values through the grant of this Conservation Easement to County and City. This Conservation Easement forever protects the Conservation

Conservation Easement By and Among
SCVWD, City of Morgan Hill and
County of Santa Clara – Lake Silveira

Easement Area from uses that would impair or interfere with the Conservation Values. Use of the Conservation Easement Area must not impair or interfere with the Conservation Values and must be compatible with these Conservation Values. Notwithstanding the foregoing, Grantor and Grantee hereby acknowledge and agree that this Conservation Easement is subordinate and subject to the fully executed Mitigation Easement only with respect to the Mitigation Easement Area so long as all Grantor's successors and assigns are forever bound by the terms of this Conservation Easement and a future trail development and connectivity as generally depicted in the attached **Attachment 4** ("Proposed Trail Alignment") is not impacted; and,

C. The City prepared and adopted a Master Plan for Lake Silveira, on or about April 19, 1989, hereinafter called the "1989 Master Plan", which was approved by the County's Board of Supervisors on September 11, 1990; and,

D. County adopted the 1995 Countywide Trails Master Plan on November 14, 1995, as part of its General Plan, which included a proposed future connector trail through and around Lake Silveira.

E. City and County agree that by entering into this Conservation Easement, all prior agreements by, among or between the Grantees, including all leases, with respect to the Property, excepting any prior lawful transfer of any existing fee title or easement, interests, are terminated and are of no further force or effect.

TERMS, COVENANTS AND CONDITIONS

1. **Conservation Easement Definition.** This Conservation Easement shall have a definition, force and effect consistent with California Civil Code *Section 815.1* and shall include the *Conservation Values*.

2. **Grant of Easement/Rights of Grantees.** To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to each of the Grantees for the entire Conservation Easement Area, except that, with respect to the Mitigation Easement Area only, such rights shall be subject and subordinate to the terms and conditions of the Mitigation Easement:

(a) To preserve, protect, sustain, restore, develop and enhance the Conservation Values for the Conservation Easement Area in accordance with the terms and conditions of this Conservation Easement;

(b) To enter upon the Conservation Easement Area for scientific research necessary to support monitoring and adaptive management of the Conservation Values; provided, that neither Grantee shall unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area or the Mitigation Easement Area;

(c) To enter upon the Conservation Easement Area to carry out those management and monitoring activities and requirements applicable to the Conservation Easement Area that either Grantee determines to be reasonable or necessary to preserve, protect, sustain, restore, create or enhance the Conservation Values; provided, that the Grantee performing these activities use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area and the terms and conditions of the Mitigation Easement;

(d) To prevent any activity on or use of the Conservation Easement Area that is inconsistent with the Conservation Values, to enforce the terms or conditions of this Conservation Easement and/or to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Conservation Values; and,

(e) For the perpetual opportunity for the City to develop, operate and maintain a proposed trail system connecting through and along the Conservation Easement Area, as shown on the attached **Attachment 4** (the "**Proposed Trail Alignment**"). The Proposed Trail Alignment, as depicted by a yellow dashed line on **Attachment 4**, shall have a maximum eighteen (18) foot width and shall serve as an important Conservation Value once established. City's rights to establish the Proposed Trail Alignment shall not be removed, obstructed, altered or prevented by any action of Grantor, its successors, assigns or third party beneficiaries; except that the City may be required to realign the Proposed Trail Alignment for Grantor's purposes, including but not limited to flood protection on the Property or wetlands or habitat mitigation within the Mitigation Area, as determined by Grantor in its sole, but reasonable, discretion, or as may be necessary to meet the terms and conditions of the Mitigation Easement. City shall use best efforts to establish connectivity of the Proposed Trail Alignment through two potential pedestrian trail crossings located at Olive Avenue and parallel to Monterey Highway creek bridge (collectively, the "**Crossings**"), as depicted on **Attachment 4**. However, connectivity from the Proposed Trail Alignment to Crossings shall not be unreasonably obstructed, altered or prevented by any action of Grantor, its successors, assigns or third party beneficiaries.

3. Grantor's Use of Conservation Easement Area. Notwithstanding anything to the contrary stated in this Conservation Easement, Grantor is authorized to use the Mitigation Easement Area to fulfill the obligations and responsibilities set forth in the Mitigation Easement, including without limitation, construction of flood protection measures for the Flood Protection Project, subject to compliance with all requisite laws. The Parties further hereby acknowledge and agree that Grantor shall have the right, but not the obligation, to implement reasonable public safety measures from time to time on the Property.

4. Maintenance Responsibilities. Grantor and Grantees shall be responsible for construction and maintenance, as among themselves, as follows: a) Grantor shall be solely responsible for constructing and maintaining all flood protection and on-site mitigation improvements made as part of the Flood Protection Project within the Property, including any improvements required by the Mitigation Easement within the Mitigation Easement Area; and b) City of Morgan Hill shall be solely responsible for all costs for planning, design, construction,

operation and maintenance associated with the Conservation Values, including those which the City desires to undertake in accordance with the 1989 Master Plan, the funding for which the City of Morgan Hill shall, with diligence and good faith, pursue, seek and obtain at the level necessary to fulfill the Conservation Values at all times after Grantor's completion of the Flood Protection Project.

5. Conservation Easement Appurtenant. The grant of easement contained herein binds Grantor and all of Grantor's successors and assigns, and constitutes a servitude on the Conservation Easement Area that runs with the land in perpetuity.

6. Enforcement. Any act, conveyance, contract or authorization by the Grantor that uses, or causes or allows the use of, the Conservation Easement Area in a manner contrary to or inconsistent with the terms of this Conservation Easement constitutes a material breach of this Conservation Easement, but excepting therefrom the priority rights of the Mitigation Easement with respect to the Mitigation Easement Area only. The County or City may bring an action in any court to enforce the terms of this Conservation Easement and the responsibility for paying all costs, fees, damages, penalties and claims associated with or relating to enforcement, litigation, remediation, mitigation and compliance involving this Conservation Easement shall be as determined by said court. The enforcement remedies in this paragraph are not exclusive, and each of the Grantees may pursue any and all appropriate legal and equitable remedies, including but not limited to specific performance and injunctive relief. Grantees each have sole discretion to determine under what circumstances an enforcement action shall be brought. A Grantee's failure to enforce the terms of this Conservation Easement shall not be deemed a waiver of either of the Grantee's rights regarding any subsequent breach.

7. Right of Entry. Grantor grants to each of the Grantees and their respective successors, assigns, agents, employees and contractors a right to enter the Property (the "**Right of Entry**") at reasonable times to inspect the Conservation Easement Area for compliance with this Conservation Easement or to conduct any maintenance or restoration activities, with such right of entry being subordinate and subject to the terms and conditions of the Mitigation Easement with respect to the Mitigation Easement Area. Prior to entering the Property, the Grantee seeking entry will notify Grantor at least forty-eight (48) hours in advance, except for emergencies in which case said Grantee may provide notice immediately upon or after entry. The notice may be by telephone, personal service, email or U.S. mail delivered to the address of the Grantor as listed on the most recent assessment roll of the Office of the Assessor for Santa Clara County. Each Grantee shall indemnify, defend, and hold harmless Grantor for any and all claims, liabilities, losses, injuries (including death and bodily injury), penalties, fees and damages, directly caused by the Grantee's use of this Right of Entry and/or its agents, employees or contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of Grantor, its employees, agents, successors, assigns or contractors or the other Grantee or the other Grantee's employees, agents, successors, assigns or contractors. This Right of Entry includes the right to enter the land to correct any dangerous condition as defined by California Government Code *Section 830 et seq.*

(a) County acknowledges and agrees to apply for and secure an appropriate permit from the City of Morgan Hill for attendance by third party invitees at any County-sponsored

events occurring within the Conservation Easement, and such permit shall not be unreasonably withheld or denied.

8. Liability and Indemnification.

(a) Grantor's Obligations. Grantor shall hold harmless, protect and indemnify each of the Grantees and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "**the Grantee Indemnified Parties**") from, for and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or related to Grantor's use of the Property or the use of the Property by any of Grantor's directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them, including but not limited to construction or maintenance of the Flood Protection Project, except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of any of the Grantees or any of the Grantee Indemnified Parties

(b) City's Obligations. City agrees to hold harmless, protect and indemnify the Grantor, its agents, officers, directors, and employees from and against any and all Claims arising from or related to the use of the Property as described in this Conservation Easement by any of the Grantees, any of the applicable Grantee Indemnified Parties, City's invitees, or the general public; except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of Grantor, the Corps or any of the Grantor's or Corps' successors, assigns, employees, agents, officers, directors, representatives, contractors or invitees.

(c) County's Obligations. County agrees to hold harmless, protect and indemnify the Grantor, its agents, officers, directors, and employees from and against any and all Claims arising from or related to the use of the Property by County or any of the County's directors, officers, employees, agents, contractors and representatives and each of their respective heirs, personal representatives, successors and assigns except that this indemnification shall be inapplicable to any Claim directly caused solely by the gross negligence or willful misconduct of Grantor, the Corps or any of Grantor's or Corps' successors, assigns, employees, agents, officers, directors, representatives, contractors or invitees.

9. Enforceable Covenant and Restriction. This Conservation Easement and every term, condition, restriction and covenant in it is intended for the benefit of each of the Grantees, their respective successors and assigns, and constitutes an enforceable restriction. Grantor and the Grantees each expressly intend that this covenant is to run with the land and constitutes an equitable servitude and shall bind every successive owner of the Property or of any interest in it, and shall be enforceable by each of the Grantees, their respective successors and assigns.

10. Taxes and Assessments. Grantor warrants, represents and agrees to timely pay or cause to be paid any real property taxes, assessments and liens that may be levied or assessed against the fee title to the Property, and the City of Morgan Hill hereby warrants, represents and agrees to timely pay or cause to be paid any real property taxes, assessments and liens that may be levied or assessed against any of its improvements made within the Conservation Easement Area. Grantor does not waive any legal right or recourse relating to the assessment or collection of taxes.

11. Transfer of Easement. Neither Grantee will transfer its Conservation Easement rights without the express written permission of the other Grantee and Grantor, which permission shall not be unreasonably withheld or delayed. Any proposed transfer shall be subject to the following: (a) the Grantee desiring to transfer or assign its Conservation Easement rights shall give the other Grantee and Grantor at least sixty (60) calendar days prior written notice of the proposed assignment or transfer, (b) the transfer is only to another California agency, city, county or special district that has the authority to acquire and hold conservation easements pursuant to California Civil Code *Section 815.3* and California Government Code *Section 65967(c)* (and any successor or other provisions then applicable), (3) the transferee or assignee is otherwise reasonably acceptable to the other Grantee and to Grantor; and (4) the transferee or assignee agrees in writing to assume fully the obligations hereunder of the Grantee seeking the transfer. The failure of a Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Transfer of Property. Grantor agrees to incorporate this Conservation Easement by reference into any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to each of the Grantees of its intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Each of the Grantees shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement.

13. Amendment. This Conservation Easement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by all the parties hereto, or their successors in interest, it being understood that no Grantee or Grantor will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Conservation Easement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this Conservation Easement to any extent or in any manner.

14. Merger. The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the Property become vested in the same party.

15. Headings. The titles and headings of the various sections of this Conservation Easement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Conservation Easement.

16. Governing Law; Exclusive Jurisdiction. This Conservation Easement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Conservation Easement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Conservation Easement, including arbitration or mediation proceedings, shall be brought only in the State of California, County of Santa Clara EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA.

17. Severability. Each and every provision of this Conservation Easement is severable from any and all other provisions of this Conservation Easement. Should any provision or provisions of this Conservation Easement be, by operation of law, unenforceable, the balance shall nonetheless be of full force and effect. If there is a conflict between a part of this Conservation Easement and any present or future law, regulation or other regulatory mandate or requirement, the part of this Conservation Easement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of the law, regulation, regulatory mandate or requirement. Such curtailment may commence as quickly as necessary to ensure full compliance with applicable law, regulation, regulatory mandate or requirement. Furthermore, in that event, the parties agree to negotiate in good faith to amend this Conservation Easement in such a manner as will provide each party with the same intended benefit while still complying with all applicable laws and regulations.

18. Waivers. No delay or omission by either party hereto to exercise any right in each instance, including those occurring upon any noncompliance or default by the other party, with respect to any of the terms of this Conservation Easement shall impair any such right or power or be construed to be a waiver thereof of any other instance in whole or in part. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

19. Cumulative Remedies. The rights and remedies of each of the parties to this Conservation Easement, whether pursuant to this Conservation Easement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

20. Construction. This Conservation Easement shall not be construed more strongly against any party regardless of who is more responsible for its preparation.

21. Relationship of Parties. The parties acknowledge that nothing set forth in this Conservation Easement shall be deemed or construed to render the parties as joint venturers, partners, agents, a joint enterprise or employer and employee. Under no circumstances shall any party be considered the employer of any other party's personnel, nor shall any party have any right with respect to any employee, agent or representative of any other party. No party shall have authority to contract for or bind the other in any manner.

22. Voluntary Execution. The parties acknowledge that each of them have been furnished with copies of, and have read, this Conservation Easement and that this Conservation Easement has been freely and voluntarily entered into by them and they agree to be fully bound by the terms hereof. Furthermore, this Conservation Easement is executed without reliance upon any representation by any person not contained herein.

23. Status of Parties; Authority to Sign. Each signatory to this Conservation Easement personally warrants that he/she has full authority to execute this Conservation Easement on behalf of the entity which he/she represents, if signing in a representative capacity. Grantor warrants that it is the sole owner, in fee title, of the Property and will continue to be the sole owner of the Property after the Effective Date (as defined below) of this Conservation Easement and the Conservation Easement shall be recorded in the official records of the County of Santa Clara.

24. Entire Agreement. This instrument, along with the Mitigation Easement, sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter contained herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with the provisions contained herein.

25. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

26. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

27. Recording. Grantees shall record this Conservation Easement in the Official Records of the county where the Property is located, and may re-record it at any time as either Grantee deems necessary to preserve their/its respective rights hereunder.

28. Counterparts. The parties may execute this Conservation Easement in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

29. Effective Date. The effective date of this Conservation Easement (“**Effective Date**”) shall be the last date that it is fully executed by the Grantor and each of the Grantees.

30. Survival. Those Sections and provisions that by their nature should survive, shall survive termination, expiration or cancellation of this Conservation Easement, including but not limited to Sections 1, 5, 6 and 8 through 30, inclusive.

////SIGNATURES FOLLOW ON NEXT PAGE////

IN WITNESS WHEREOF, effective as of the Effective Date, the parties hereto have executed this Conservation Easement as follows:

GRANTOR: SANTA CLARA VALLEY WATER DISTRICT, A Special District of the State of California

By: _____
Norma J. Camacho
Chief Executive Officer

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Brian Hopper,
Senior Assistant District Counsel

////SIGNATURES FOLLOW ON NEXT PAGE////

GRANTEE: COUNTY OF SANTA CLARA, a Political Subdivision of the State of California

By: _____
S. JOSEPH SIMITIAN, President,
Board of Supervisors

Date: _____

ATTEST:

By: _____
Megan Doyle, Clerk of the
Board of Supervisors

Date: _____

APPROVED AS TO FORM AND LEGALITY:

COUNTY COUNSEL, SANTA CLARA COUNTY

By: Shirley R. Edwards,
Deputy County Counsel

////SIGNATURES FOLLOW ON NEXT PAGE////

GRANTEE: CITY OF MORGAN HILL, a Municipal Corporation

By: _____
_____, Chair,
City Council

Date: _____

ATTEST:

By: _____
_____, Clerk of the
City Council

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Donald Larkin, City Attorney

ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA } SS

On this ____ day of _____, in the year 20____, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Trustee(s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))

ALL-PURPOSE ACKNOWLEDGMENT

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COUNTY OF SANTA CLARA } SS

On this ____ day of _____, in the year 20__, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

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☐ Individual

☐ Trustee(s)

☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))

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STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA } SS

On this ____ day of _____, in the year 20____, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal:

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual

☐ Trustee(s)

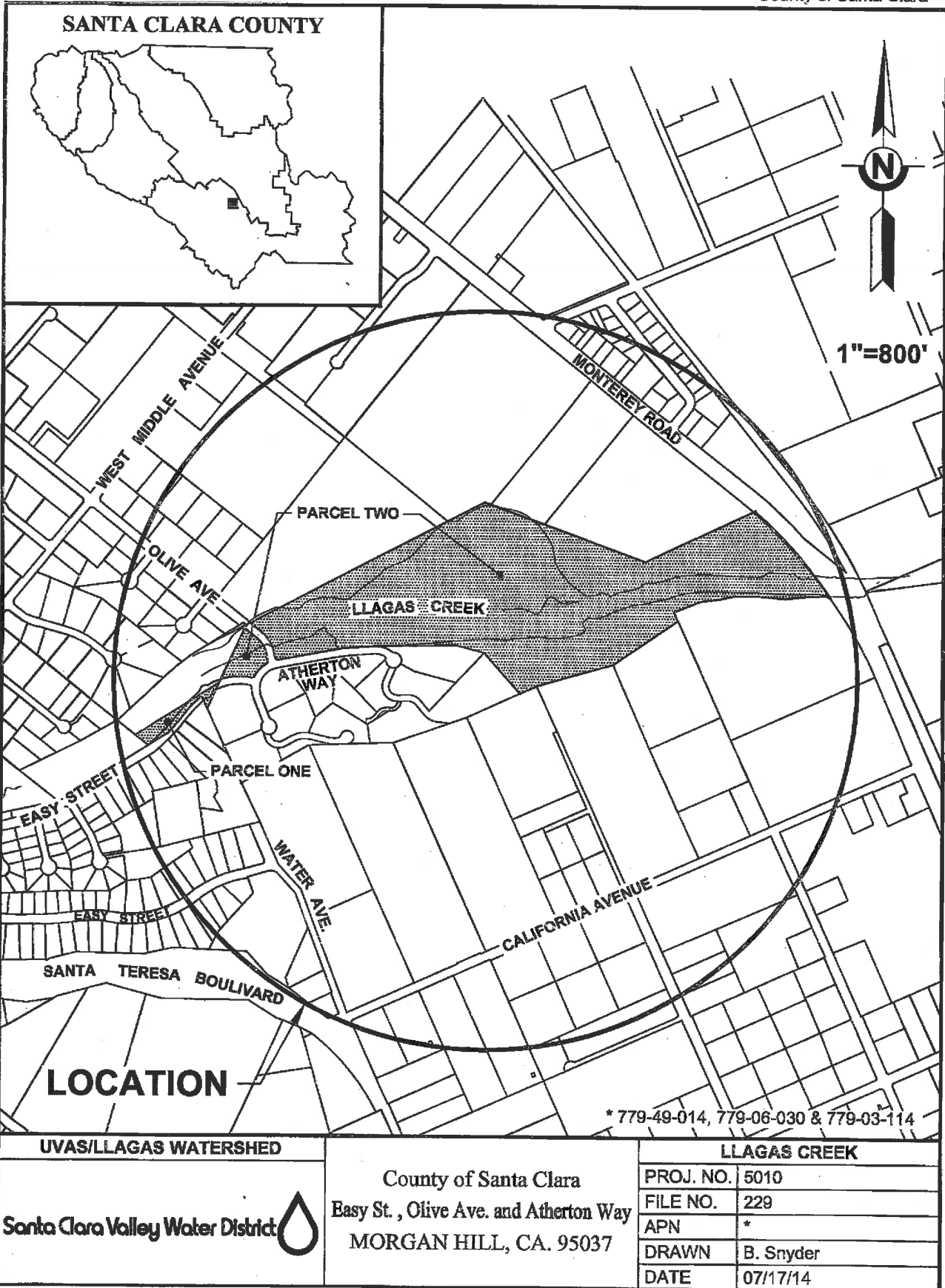
☐ Corporate Officer(s): _____

☐ Guardian/Conservator

☐ Attorney-In-Fact _____

Signer is Representing (Name of Person(s) or Entity(ies))

ATTACHMENT 1
(to Conservation Easement)
LEGAL DESCRIPTION OF PROPERTY (LAKE SILVEIRA)



SCVWD C:\ROW 2013\LLagas\2014-174\Location Maps\5010 229 Location Map.dwg

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

By: DOC. 7403031 & DOC. 7403032

Checked by: _____ Date: _____

PROJECT: LLAGAS CREEK

PROPERTY: COUNTY OF SANTA CLARA

FILE NO.: 5010-229

All that certain real property situate in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL ONE

Being that portion of LOT 52 as conveyed from Walter Von Tagen and Verne D. Freeman and Joanne O. Freeman, his wife to the County of Santa Clara per Document 7403032, Santa Clara County Records described as follows:

LOT 52, as said lot is shown upon that certain Map entitled, "Tract No. 5448, Amberwood Glen Unit No. 2" which Map was filed for record on June 13, 1974 in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records described as follows:

EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to the City of Morgan Hill, recorded February 2, 1976 in Book B849 of Official Records, page 25, as follows:

BEGINNING at the most Westerly corner of Lot 52, said corner also being a common corner with Lot 41 as said Lots and corners are shown on the Map entitled "Tract No. 5448, Amberwood Glen Unit No. 2" filed in Book 341 of Maps, pages 46, 47 and 48, Santa Clara County Records; thence South 51° 40' East 147.44 feet; thence North 57° 20' 30" East 628.33 feet; thence North 24° 26' 42" East 407.80 feet; thence South 62° 11' 31" West 224.91 feet; thence tangent to the last course, along a curve to the left an arc distance of 362.67 feet, said curve having a central angle of 15° 40' 58" and a radius of 1325.00 feet; thence tangent to the last curve, South 46° 30' 33" West 407.53 feet; thence along a curve to the right an arc distance of 33.87 feet, said curve having a central angle of 2° 21' 07" and a radius of 825.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion thereof described in the Deed from Walter Von Tagen, et al, to Sunnybrook Ranch, a limited partnership, recorded June 9, 1976 in Book C071 of Official Records, page 423, as follows:

BEGINNING at the most northeastern corner of Parcel 3 as said parcel is shown on the Parcel Map filed in Book 326 of Maps, at page 42, Santa Clara County Records; thence South 56° 58' 35" West, 288.84 feet; thence from a tangent which bears North 42° 54' 23" East, along a curve to the left, an arc distance of 122.22 feet; said curve having a radius of 1000.00 feet and a central angle of 7° 00' 10"; thence tangent to the last curve along a curve to the right an arc distance of 192.08 feet, said curve having a radius of 1000.00 feet and a central angle of 11° 00' 19"; thence South 25° 03' 44" East, 89.21 feet to the point of beginning.

Containing 0.913 acre of land, more or less. APN's: 779-03-114

BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 5448 filed in Book 341 of Maps, at pages 46, 47 and 48, filed in the office of the Recorder, County of Santa Clara, State of California.

PARCEL TWO

Being that portion of Parcels 1, 2, and 3 as conveyed from Verne D. Freeman and Joanne O. Freeman et al to the County of Santa Clara per Document 7403031 described as follows:

Being all of Parcels 1, 2, and 3 as shown on Parcel Map recorded in book 432 of Maps at page 29, Santa Clara County Records described as follows:

Excepting therefrom a parcel of land described as follows:

Beginning at an iron pipe at the Northwestern line of Parcel 3 at the intersection with the centerline of Olive Avenue as shown on said map and running thence along said Northwestern line North 61° 50' 14" East 27.35 feet; thence South 52° 05' 23" East 93.21; thence along a tangent curve to the right having a radius of 225.00 feet and a central angle of 41° 06' 14", a distance of 161.42 feet; thence South 10° 59' 09" East 27.83 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 90° a distance of 31.42 feet; thence North 79° 00' 51" East 413.52 feet, and North 89° 59' 59" East 203.85 feet; thence along a tangent curve to the right, having a radius of 155 feet and a central angle of 7° 32' 32"; a distance of 20.40 feet; thence North 88° 45' 15" East 511.76 feet, South 75° 16' 02" East 174.74 feet, and South 41° 39' 22" East 346.11 feet to a point in the Southeasterly line of Parcel 2; thence along said Southeasterly line, South 64° 58' 03" West 370.00 to a 3/4" iron pipe, South 69° 49' 09" West 496.66 feet to an old 2" x 3" stake, and South 87° 47' 33" West 536.63 feet to a 3/4" iron pipe at the corner common to Parcels 2 and 3; thence along the Southeasterly line of Parcel 3, South 59° 40' 07" West 497.82 feet to 3/4" iron pipe at the most Southerly corner of Parcel 3; thence along the Southwesterly and Northwestern line of Parcel 3, North 25° 05' 14" West 525.25 feet and North 23° 59' 11" East 207.43 feet; thence along a curve to the right from a tangent bearing of North 71° 20' 24" East, having a radius of 380.00 feet and a central angle of 29° 26' 02", a distance of 195.21 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 75° 11' 02" a distance of 26.24 feet; thence along a tangent curve to the right, having a radius of 185.00 feet and a central angle of 33° 27' 30" a distance of 108.03 feet; thence along a tangent curve to the left, having a radius of 20.00 feet and a central angle of 70° 02' 02", a distance of 24.45 feet; thence North 10° 59' 09" West 40.15 feet; thence along a tangent curve to the left, having a radius of 175.00 feet and a central angle of 41° 06' 14" a distance of 125.55 feet; thence North 52° 05' 23" West 98.10 feet to the Northwestern line of Parcel 3; thence along said Northwestern line North 23° 59' 11" East 25.76 feet to the point of beginning.

Containing 52.019 acres of land, more or less. APN's: 779-06-030 and 779-49-014

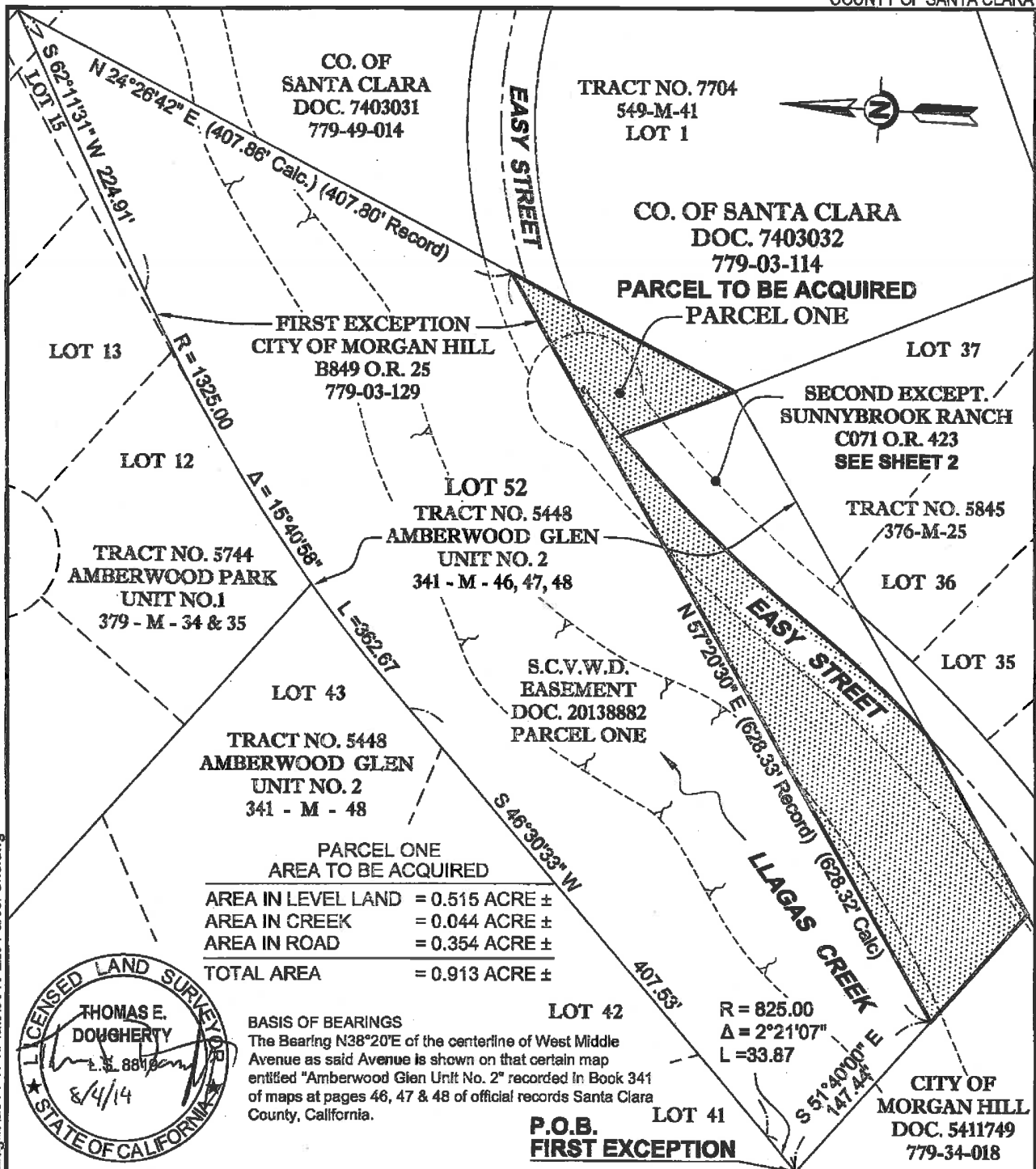
BASIS OF BEARING: Bearings are based on and identical to that certain Tract Map No. 7704 filed in Book 549 of Maps, at pages 41, 42 and 43, filed in the office of the Recorder, County of Santa Clara, State of California.

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


Thomas E. Dougherty L. S. 8819

8/4/14
Date





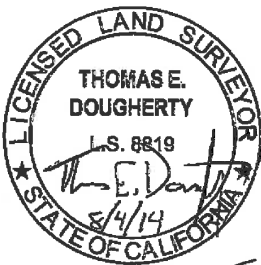
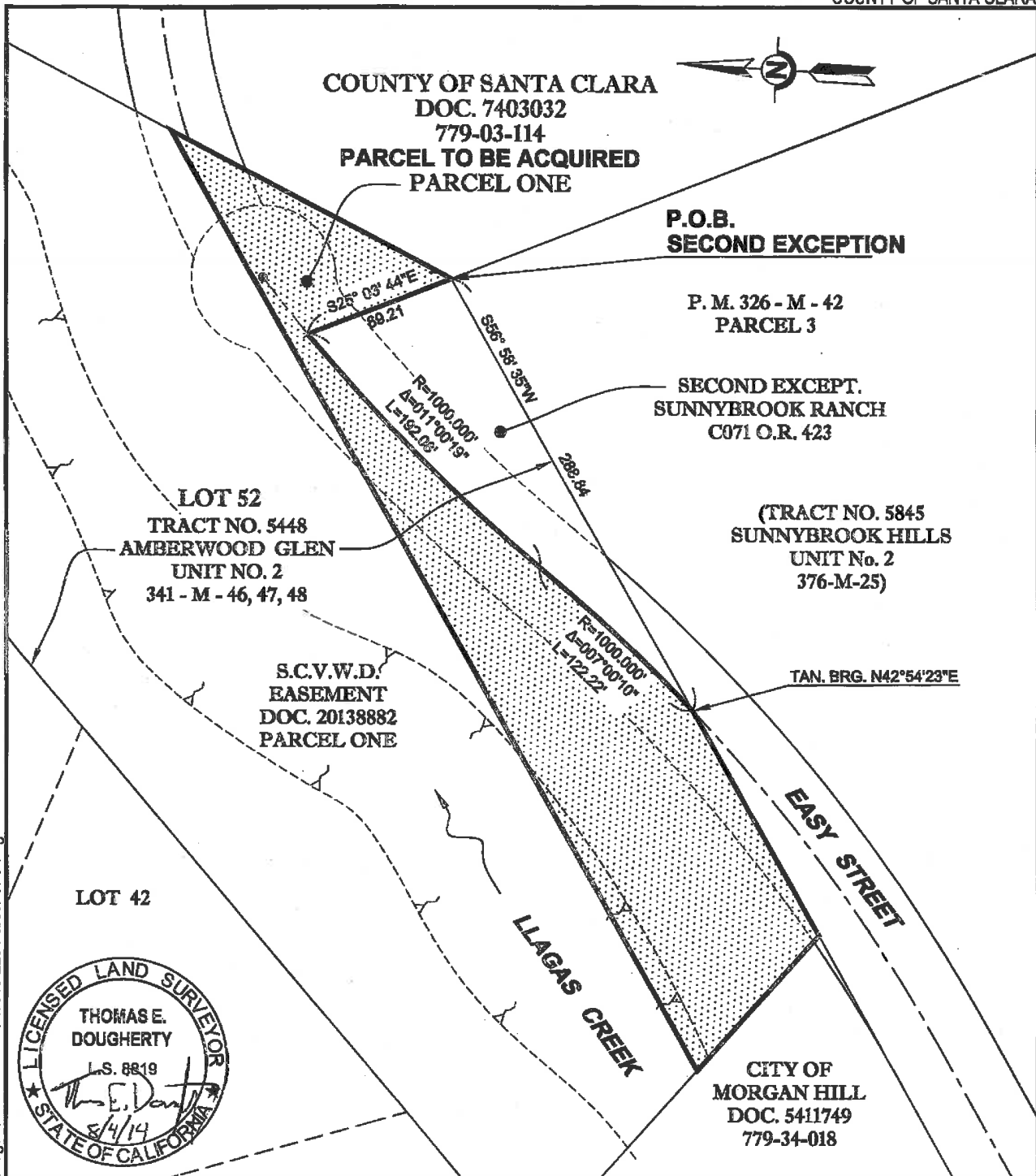
Santa Clara Valley Water District

SCALE: 1" = 100'

PROJ. NO.	5010
FILE NO.	229
APN	779-03-114
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	B. Snyder
DATE	07/16/14

REV.	APPR.	DATE	DESCRIPTION
1			
2			

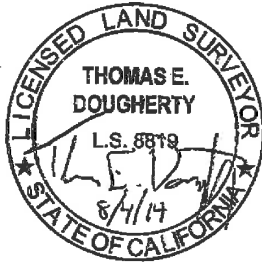
Sheet 1 of 4



Santa Clara Valley Water District

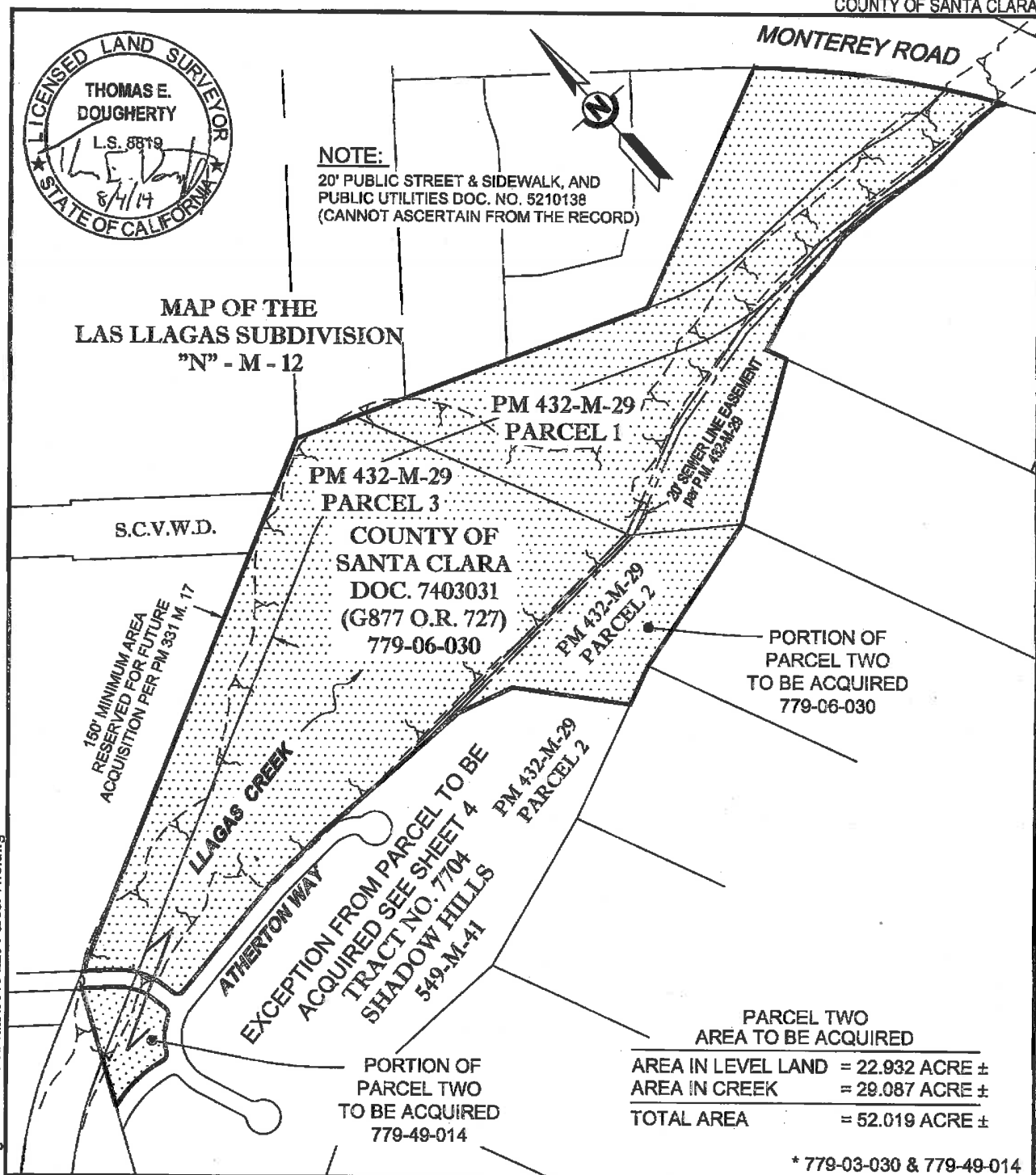
SCALE: 1" = 80'

				PROJ. NO.	5010
				FILE NO.	229
				APN	779-03-114
				TITLE REPORT NO.	13-51058087-B-EB
				DRAWN	B. Snyder
				DATE	07/16/14
REV.	APPR.	DATE	DESCRIPTION		
1					
2					

**NOTE:**

20' PUBLIC STREET & SIDEWALK, AND
PUBLIC UTILITIES DOC. NO. 5210138
(CANNOT ASCERTAIN FROM THE RECORD)

**MAP OF THE
LAS LLAGAS SUBDIVISION
"N" - M - 12**



**PARCEL TWO
AREA TO BE ACQUIRED**

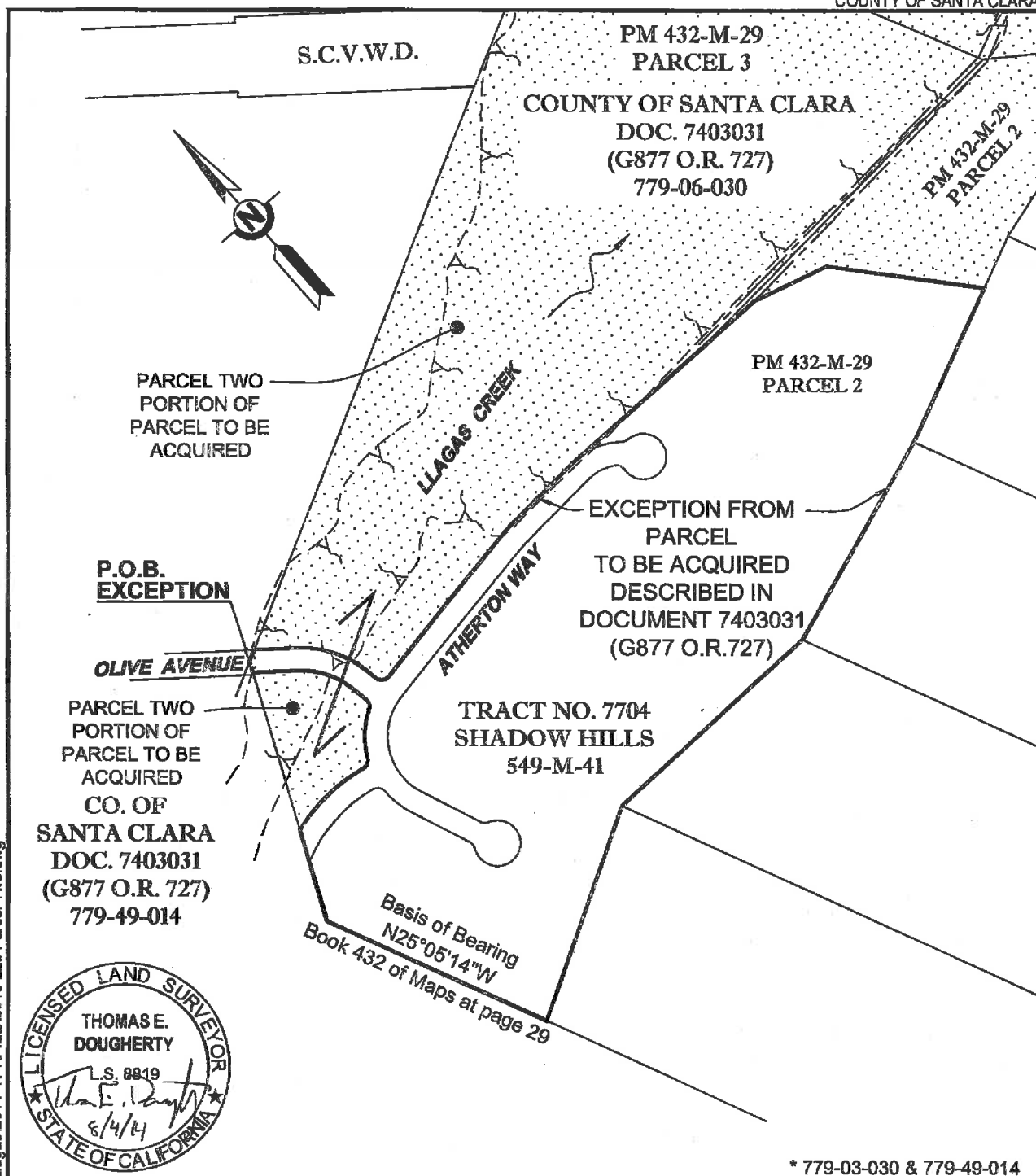
AREA IN LEVEL LAND = 22.932 ACRE ±
AREA IN CREEK = 29.087 ACRE ±
TOTAL AREA = 52.019 ACRE ±

* 779-03-030 & 779-49-014

Santa Clara Valley Water District

SCALE: 1" = 400'

REV.	APPR.	DATE	DESCRIPTION	PROJ. NO.	26174051
1		1/14	CHANGE TITLE REPORT NO.	FILE NO.	5010-229 TWO
2		7/14	Add property - update PTR (B. Snyder)	APN	*
				TITLE REPORT NO.	13-51058087-B-EB
				DRAWN	K. Comerer
				DATE	06/20/13



* 779-03-030 & 779-49-014

Santa Clara Valley Water District

SCALE: 1" = 300'

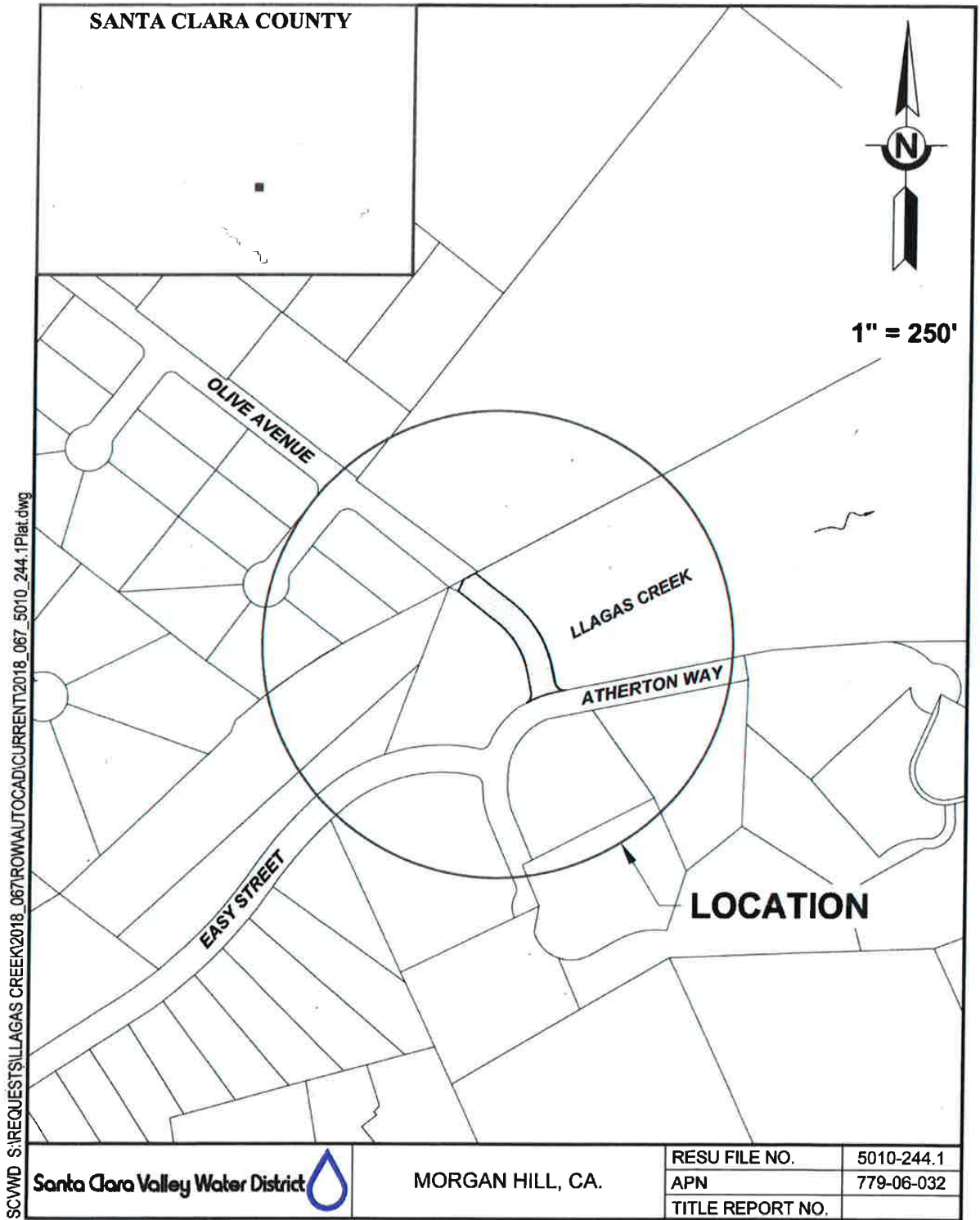
PROJ. NO.	26174051
FILE NO.	5010-229
APN	779-06-030
TITLE REPORT NO.	13-51058087-B-EB
DRAWN	K. Comerar
DATE	06/20/13

REV.	APPR.	DATE	DESCRIPTION
1		1/14	CHANGE TITLE REPORT NO.
2		7/14	Add Parcel - update PTR

Sheet 4 of 4

ATTACHMENT 2
(to Conservation Easement)

LEGAL DESCRIPTION OF OLIVE STREET CROSSING



SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-244.1


ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THE LANDS AS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED ON NOVEMBER 4, 2014 AS DOCUMENT NUMBER 22760059, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

CONTAINING 0.339 ACRE OF LAND, MORE OR LESS.

SURVEYOR'S STATEMENT:

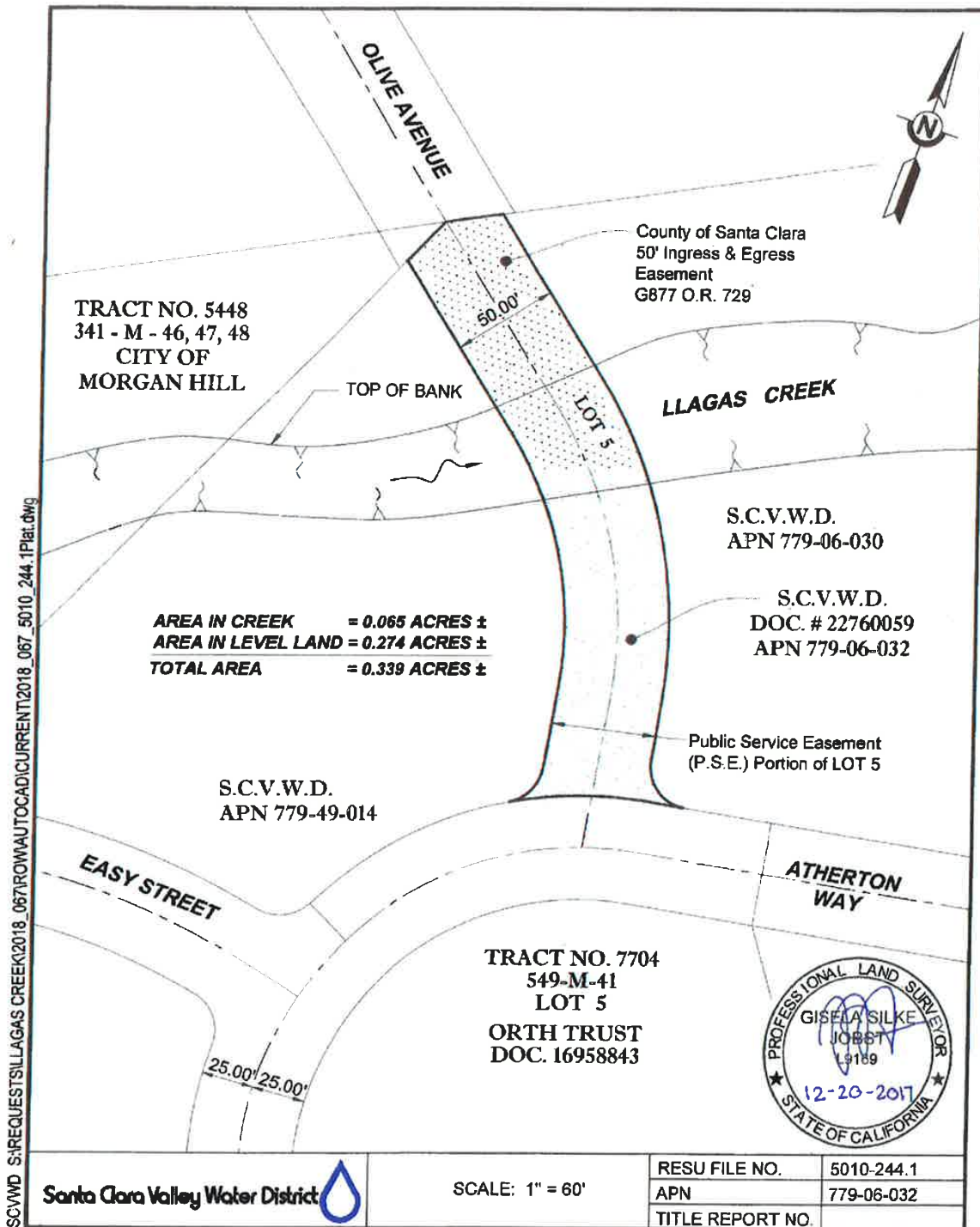
THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.



GISELA SILKE JOBST, L9169

12-20-2017
Date





SHEET 1 OF 1

ATTACHMENT 3
(to Conservation Easement)

FORM OF MITIGATION EASEMENT

PLEASE NOTE: The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum. (Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[*Fill in Grantee Name/Address*] Grantee Name Grantee Address City, State ZIP
Attn: _____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED [*Insert Bank Name*]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [*insert full legal name(s) of Grantor:* _____] ("Grantor"), in favor of [*insert Grantee's full legal name:* _____] [*if CDFW is Grantee insert: the State of California*] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [*insert City name*], County of [*insert County name*], State of California, and designated Assessor's Parcel Number(s) [*insert Assessor's Parcel Number(s)*] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States*]. Individually and collectively, these wildlife and habitat values comprise the "Bank Property Conservation Values" of the Bank Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes

pursuant to California Civil Code Section 815.3, Fish and Wildlife Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. ***[Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI]***. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. ***[Use this version of Recital F when qualified nonprofit organization is Grantee]***. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[Use this version of Recital F when governmental entity is Grantee]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. ***[Modify this recital as appropriate when CDFW, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI]***. This Conservation Easement is granted pursuant to the ***[insert the appropriate term: Mitigation Bank Enabling Instrument (the "BEI") or Conservation Bank Enabling Instrument (the "CBEI")]***, by and between ***[insert Bank Sponsor name(s)]***, ***[insert Bank Property Owner name(s)]***, and ***[insert Region name]*** CDFW, CDFW Tracking No. ***[insert number]***, the ***[insert Field Office name]*** of the USFWS, USFWS File No. ***[insert number]***, the ***[insert District name]*** District of USACE, USACE File No. ***[insert number]***, and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the ***[insert: BEI or CBEI]***. ***[Remove reference to any agency that is not a party to the BEI or CBEI]*** CDFW, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the ***[insert: BEI or CBEI]***, the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the ***[insert: BEI or CBEI]***, the Development

Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [*insert: BEI or CBEI*], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [*insert: BEI or CBEI*], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Bank Property Conservation Values. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (a) To preserve and protect the Bank Property Conservation Values.
- (b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [*insert: BEI or CBEI*], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.
- (c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.
- (d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Bank Property Conservation Values shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(c) Agricultural activity of any kind [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*] except grazing for vegetation management as specifically provided in the [*specify: Development Plan or Management Plan*].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [*include the following language only if the Development Plan or Management Plan specifies such an exception:*]; and except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify: Development Plan or Management Plan*].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Bank Property Conservation Values or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Bank Property Conservation Values; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Bank Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [*insert if State of California is Grantee:* CDFW and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [*insert: BEI or CBEI*], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) [*Add if nonprofit organization is Grantee*] Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the [*insert: BEI or CBEI*], the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [*insert if CDFW or another government entity is Grantee: , including permits and approvals required from Grantee acting in its regulatory capacity*], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with

satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party *[insert if CDFW is grantee: or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding]*.

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of the Bank Property Conservation Values, *[include this phrase only if there are jurisdictional*

wetlands: including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[*Use the appropriate paragraph:*]

[*If CDFW or other state agency is Grantee:*] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Wildlife Code Section 1348.3.

[*All other Grantees:*] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [*insert: BEI or CBEI*], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
[Grantee address]
Attn: _____

To Grantee: *[insert the appropriate Grantee information:]*

[Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[Remove/modify the following blocks as appropriate when CDFW or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To CDFW: [Department of Fish and Wildlife]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
[Field Office name] Field Office
[FIELD OFFICE ADDRESS]
Attn: Field Supervisor

[Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* ***[add if Grantee is nonprofit organization: and Government Code Section 65965]***. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [*insert: BEI or CBEI*], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other

failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [*add if CDFW is Grantee:* or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [insert: BEI or CBEI], [**choose applicable statement:** there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement **or** the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Bank Property Conservation Values. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the *[include the agencies that will be third-party beneficiaries: CDFW, USFWS, USACE, and USEPA]* (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the *[insert: BEI or CBEI]* and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: *[Notarization Required]* Approved as to form:

[Remove or modify the approval block as appropriate, i.e., Grantee's legal counsel if CDFW is not Grantee.]

BY: _____
General Counsel

State of California

NAME: _____
_ Department of Fish and Wildlife

TITLE: _____ BY: _____

[Insert General Counsel Representative]

General Counsel
DATE: _____

CA PDT CE Template - March 3, 2010

**ATTACHMENT 3-A
(to Conservation Easement)**

MITIGATION EASEMENT AREA

SANTA CLARA VALLEY WATER DISTRICT
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH $61^{\circ}50'14''$ EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH $70^{\circ}23'40''$ EAST, 86.99 FEET TO **THE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORTHWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH $70^{\circ}23'40''$ EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH $55^{\circ}08'06''$ EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $36^{\circ}35'24''$, AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH $18^{\circ}32'42''$ EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $43^{\circ}53'06''$, AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH $24^{\circ}34'39''$ WEST, 40.66 FEET;

THENCE SOUTH $77^{\circ}04'33''$ WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'34", AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH 55°46'53" WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 94°40'37", AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°46'11", AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH 89°18'41" WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 55°22'46", AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°38'00", AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH 80°26'05" WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 65°48'22", AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH 14°37'42" WEST, 55.16 FEET;

THENCE NORTH 79°47'32" EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°02'53", AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH 50°44'39" EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°37'57", AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'40", AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE POINT OF BEGINNING.

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS:

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

SURVEYOR'S STATEMENT:

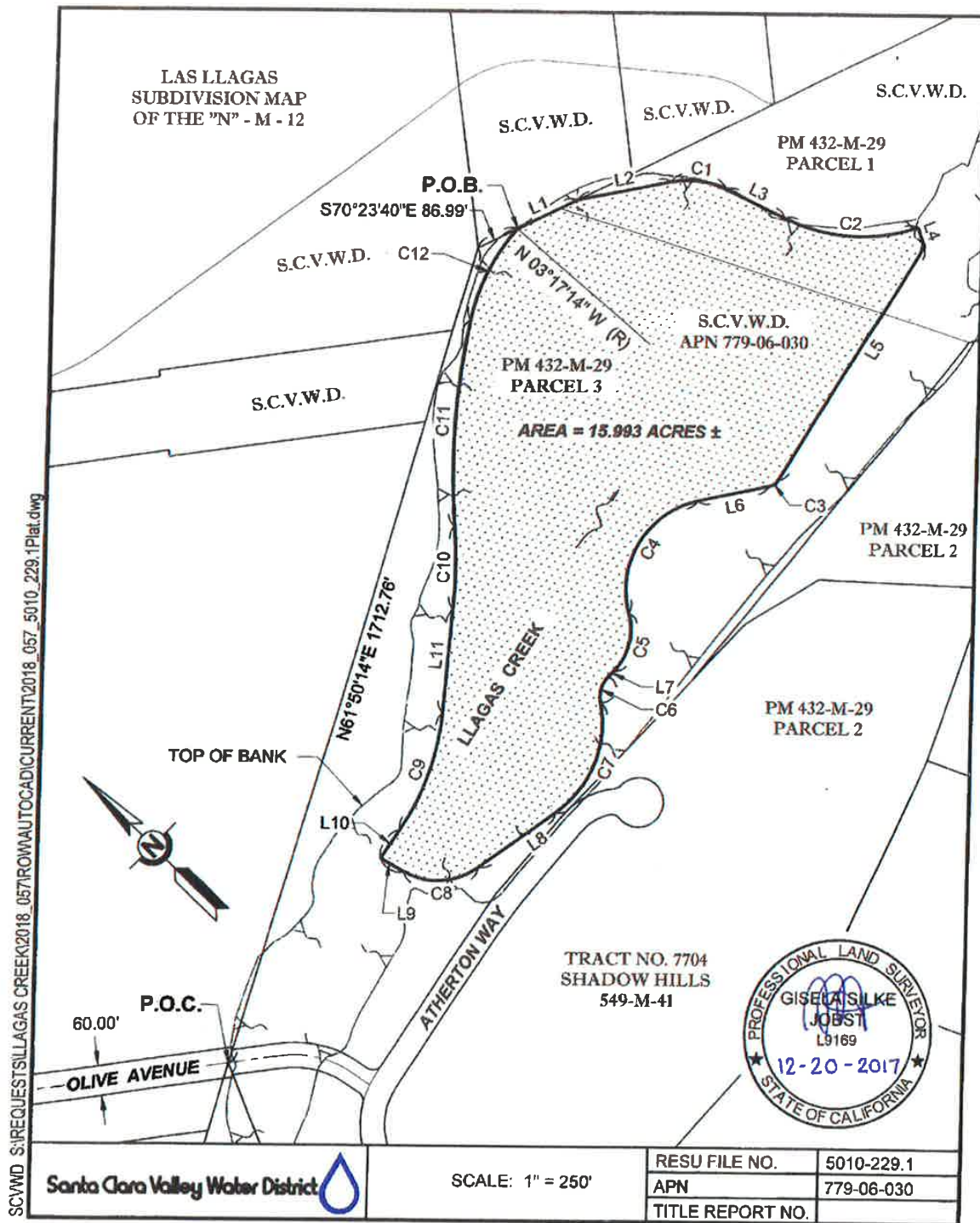
THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.



GISELA SILKE JOBST, L9169

12-20-2017
Date





SCVWD S:\REQUESTS\LLAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1\Plat.dwg

SCVWD S:\REQUESTS\LAGAS CREEK\2018_057\ROW\AUTOCAD\CURRENT\2018_057_5010_229.1Plat.dwg

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'



SCALE: N.T.S.

RESU FILE NO.	5010-229.1
APN	779-06-030
TITLE REPORT NO.	

SHEET 2 OF 2

ATTACHMENT 4
(to Conservation Easement)

PROPOSED TRAIL ALIGNMENT

