

Facility: Lower Penitencia Creek
Owner: SCVWD
APN:086-05-012 (Portion)
Address: South Abel Street, Milpitas
File: 4033-32.04

**Right of Way Agreement
among
KB Homes South Bay, Inc.,
City of Milpitas
and
Santa Clara Valley Water District**

This Agreement is entered into this 28th day of November, 2006, among Santa Clara Valley Water District, a public entity, hereinafter "District," the City of Milpitas, a municipal corporation, hereinafter "City," and KB Home South Bay, Inc., a California corporation, hereinafter "KB Home".

RECITALS:

- A. District owns fee title to certain lands within the City commonly referred to as the Lower Penitencia Creek, a portion of which is described in "Exhibit A" attached hereto and incorporated herein ("Property"). The Property consists of Parcel A and Parcel B, as more particularly described in Exhibit A.
- B. District has determined that the fee title interest in the Property is no longer necessary to be retained for uses and purposes of the District.
- C. District will reserve easements for ingress, egress, flood protection and storm drainage purposes.
- D. KB Home is developing a parcel of land adjacent to Parcel A and Parcel B. Property is needed for a new bridge, street improvements and other public improvements, including one existing bridge and related roadway transitions on Parcel A and Parcel B, to provide public access to the proposed development ("KB Work"), public streets and parks. KB Work is currently being performed on Parcel A and Parcel B pursuant to two District encroachment and construction permits (Permit No's, 05433 dated September 23, 2005, and 05441 dated November 15, 2005) ("Permits").
- E. City is willing to accept title to Property from District in order to facilitate KB work, on the condition that City does not pay for Parcel A and Parcel B.

It is agreed between the parties hereto as follows:

1. WHOLE AGREEMENT

This agreement represents the entire understanding between the parties as to the transfer of the subject Property. Related agreements that will also affect this Property include an agreement between: (1) KB Home and the City for the improvement of the street and other

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public improvements serving KB Home's project under Subdivision Improvement Agreement, File No. 100.01.214, dated December 7, 2005, (2) the Permits, and (3) escrow instructions for transfer of the Property the City.

2. DELIVERY OF DOCUMENT

A Grant Deed, document number 4033-32.04, in the form attached hereto and incorporated herein by reference as Exhibit "B" (pages 1-2) shall be executed by District and delivered to City for the purpose of conveying the Property to City. City agrees to accept said document and deposit it into escrow within 15 days of receipt from District.

3. PURCHASE PRICE

KB Home shall pay District the sum of \$10,000, through the escrow established pursuant to Paragraph 4 below, as determined by the Fair Market Value appraisal dated June, 30, 2006, for the fee title interest District has in the Property.

4. ESCROW

This transaction will be handled through an escrow with Alliance Title, 901 Campisi Way, Suite 330, Campbell, CA 95008, escrow number 11508366. KB Home shall deposit funds in the amount of the purchase price and related escrow fees in escrow.

5. EXPENSES OF ESCROW

KB Home shall pay all customary escrow and recording fees, city and county documentary transfer taxes, the premium for the policy of title insurance that shall be issued to City, any and all other expenses, fees, and reasonable costs incurred in connection with the conclusion of the transferring title.

6. "AS IS" ACQUISITION

City acknowledges that its acquisition of the Property is "AS IS" from District in its present state and condition, except as expressly agreed in paragraph 7B.

District makes no declaration or warranty of any kind as to the condition of Property, including but not limited to the possible presence of contamination by hazardous materials.

7. HAZARDOUS MATERIALS

A. District has no knowledge of and has not introduced into Property, any materials that may cause or contribute to mortality or serious illness or pose a substantial hazard to human health ("Hazardous Materials"), including but not limited to any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental

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Response Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 App. U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 et seq.), Section 25117 of the California Health & Safety Code, Section 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.

B. If, subsequent to the acceptance by City of Property, City discovers the presence of Hazardous Materials, which presence predates the transfer of the Property and which presence was introduced to the Property by District, the District shall indemnify, defend (with counsel reasonably acceptable to City) and hold the City harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses (including, without limitation, diminution in value of the Property and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees) which arise as a result of District's breach of its covenant. District's indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in, on or under the Property or adjacent Property.

C. Aside from liability under paragraph A, City agrees to take said Property in an "as is" condition.

8. NOTICES

Any notice, consent, approval, or other communication required or permitted hereunder or by law shall be in writing and shall be deemed duly given when personally delivered, or in lieu of such personal service, forty-eight (48) hours after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below or to such other address of which the parties are subsequently notified in writing:

District: Santa Clara Valley Water District
Clerk of the Board
5750 Almaden Expressway
San Jose, CA 95118

City: City of Milpitas
Engineering Division/Land Development Section
455 East Calaveras Boulevard
Milpitas, CA 95035

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With copies to: City of Milpitas

City Clerk's Office
455 East Calaveras Boulevard
Milpitas, California 95035

and: City Attorney
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

KB Home: KB Home, South Bay Inc.
6700 Koll Center Parkway, Ste. 200
Pleasanton, CA 94566
Attn: Denise Cunningham

9. LIABILITY

KB Home shall indemnify, defend, and hold District and City, and each of their officers, agents, and employees harmless from every loss, expense, claim, suit or liability including attorneys fees by reason of injury (including death) to persons or damage to Property resulting from KB Home's negligent acts, errors or omissions or willful misconduct on the Property during the course of construction, until such time that the City has formally accepted said improvements, or in the operation or performance of this agreement.

10. OTHER

The execution of this Agreement by the parties herein shall satisfy Condition No. 59 of City' approval for GENERAL AND SPECIFIC PLAN AMENDMENT NO. GP2003-1, ZONING MAP AMENDMENT NO. ZC2003-2, VESTING MAJOR TENTATIVE MAP No. MA2003-4, PLANNED UNIT DEVELOPMENT NO. PD2003-1, SITE AND ARCHITECTURE APPROVAL (P-SZ2003-6), USE PERMIT NO. P-UP2003-26, AND EIA NO. EA2003-7, dated January 18, 2005.

11. CAPACITY OF PARTIES

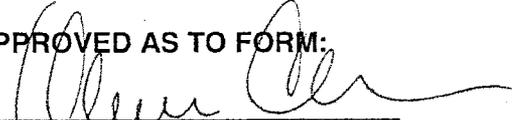
Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation, company or trustee, that such partnership, corporation, company or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

This Agreement is binding on the successors and assigns in interest of the parties of this agreement.

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**SANTA CLARA VALLEY
WATER DISTRICT, a public entity**

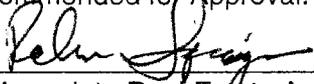
By: 
Stanley M. Williams
Chief Executive Officer

APPROVED AS TO FORM:

District Counsel

NOV 28 2006

District has executed this Agreement as of _____.

Recommended for Approval:

By: 
Associate Real Estate Agent

By: _____
Unit Manager, Real Estate Services

APPROVED AND ACCEPTED:

KB HOME

By: 
Chris Rader
SR

CITY OF MILPITAS

By: _____
Charles Lawson
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION OF A STREET RIGHT-OF-WAY
PARCEL "A" (ALVAREZ COURT BRIDGE)

All that real property situated in the City of Milpitas, County of Santa Clara, State of California, described as follows:

A portion of "Parcel 1" and "Parcel 1A", as described in the deed to the Santa Clara Valley Water District, recorded June 23, 1975 in Book B476, Page 309, Official Records of Santa Clara County, California, and a portion of "Parcel 2", as described in the deed to the Santa Clara Valley Water District, recorded July 16, 1984, in Book 1721, Page 416, Official Records of Santa Clara County, California, being more particularly described as follows:

Commencing at the point of intersection of the monument line of Abel Street, with the prolongation of the northerly line of "Parcel B", as shown on that certain Record of Survey Map filed March 7, 1963, for record in Book 157 of Maps, at Page 56, Santa Clara County Records; thence running along said northerly line and the prolongation thereof

- a.) S64°01'00"W, a distance of 43.61 feet to a point on the easterly line of said "Parcel 2"; thence leaving said northerly line and running along said easterly line
- b.) S10°22'10"E, a distance of 260.55 feet to the **TRUE POINT OF BEGINNING**, said point being on the easterly line of said "Parcel 2"; thence continuing along said easterly line
- 1.) S10°22'10"E, a distance of 99.94 feet; thence leaving said easterly line
- 2.) S79°37'50"W, a distance of 1.50 feet; thence
- 3.) N10°22'10"W, a distance of 3.61 feet; thence
- 4.) N24°56'30"W, a distance of 5.96 feet; to the beginning of a non-tangent curve to the left, from which the radius point bears S54°11'19"W, a radial distance of 22.00 feet to a point on the easterly line of said "Parcel 1A"; thence leaving said easterly line
- 5.) Northwesterly along said curve, through a central angle of 64°40'40", a distance of 24.83 feet; thence
- 6.) S79°30'39"W, a distance of 43.09 feet to a point on the westerly line of said "Parcel 1"; thence running along said westerly line
- 7.) N10°22'10"W, a distance of 54.00 feet; thence leaving said westerly line
- 8.) N79°30'39"E, a distance of 42.96 feet to the beginning of a curve to the left having a radius of 24.00 feet; thence
- 9.) Northeasterly along said curve, through a central angle of 56°42'36", a distance of 23.75 feet to a point on the easterly line of said "Parcel 1A"; thence leaving said easterly line
- 10.) N08°58'28"E, a distance of 4.53 feet; thence
- 11.) N10°22'10"W, a distance of 8.86 feet; thence
- 12.) N79°37'50"E, a distance of 1.50 feet to the **TRUE POINT OF BEGINNING**.

Containing 3,811 square feet or 0.087 acres, more or less.

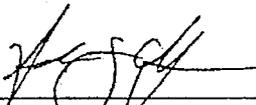
All bearings and distances shown herein are on the California State Plane Coordinate System of 1983(1991.35), Zone 3. Multiply grid distances herein by 1.00005493 to obtain ground level distances.

END OF DESCRIPTION.

A plat showing the above-described area is attached hereto and made a part hereof.

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





Andrew S. Chafer, PLS 8005
Expires 12/31/06

10/3/06

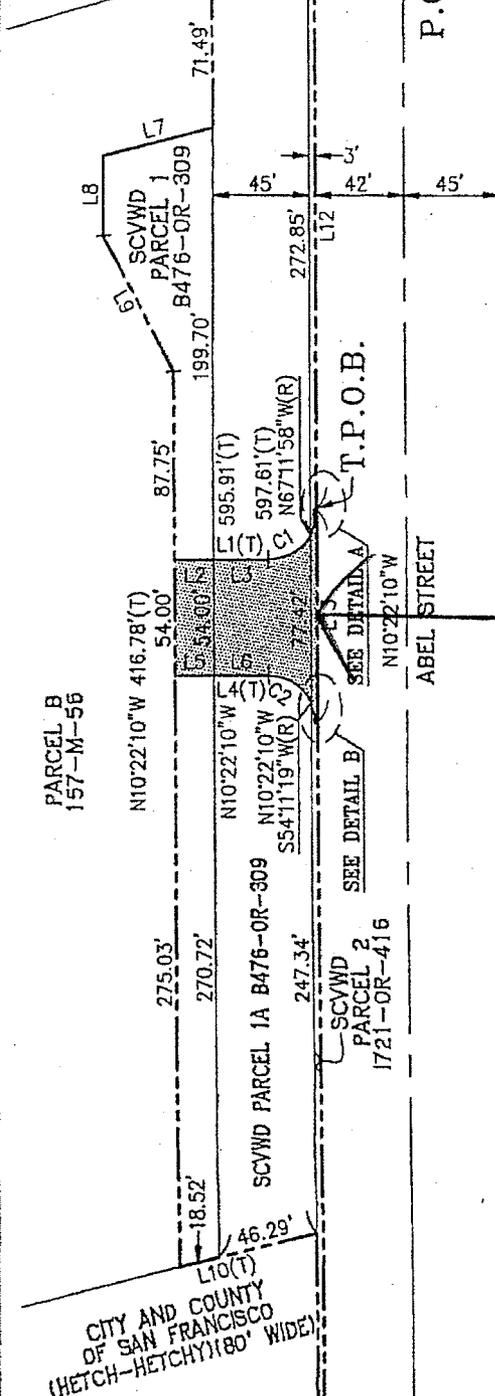
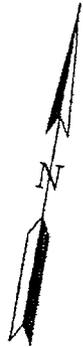
Date

TRACT NO. 1074
51-M-20

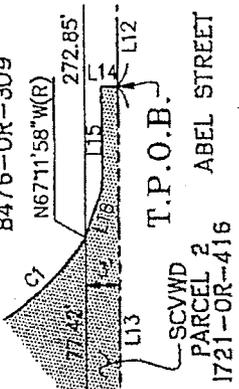
LEGEND

P.O.C.
T.P.O.B.

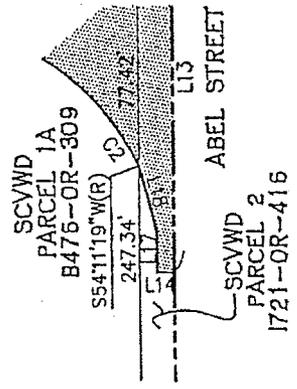
- POINT OF COMMENCEMENT
- TRUE POINT OF BEGINNING
- PROPERTY BOUNDARY LINE
- MONUMENT LINE
- EXISTING LOT LINE
- NEW RIGHT-OF-WAY LINE
- TIE LINE
- RIGHT-OF-WAY AREA (3811 SF±)
- SANTA CLARA VALLEY WATER DISTRICT
- TOTAL DIMENSION
- RADIAL BEARING



PARCEL A

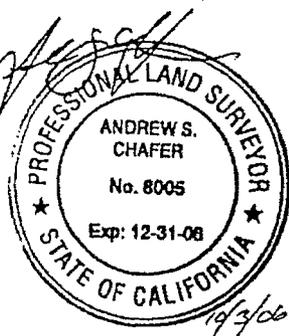


DETAIL A
N.T.S.



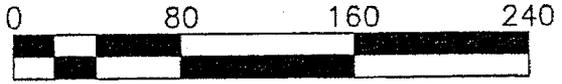
DETAIL B
N.T.S.

PARCEL A
157-M-56



LINE TABLE		
LINE	BEARING	DIST
L1	N79°30'39"E	42.96'
L2	N79°30'39"E	18.00'
L3	N79°30'39"E	24.96'
L4	N79°30'39"E	43.09'
L5	N79°30'39"E	18.00'
L6	N79°30'39"E	25.09'
L7	N65°03'23"E	51.66'
L8	N10°22'10"W	37.00'
L9	N37°40'08"W	69.77'
L10	N66°02'30"E	64.81'
L11	N64°01'00"E	43.61'
L12	N10°22'10"W	260.55'
L13	N10°22'10"W	99.94'
L14	N79°37'50"E	1.50'
L15	N10°22'10"W	8.86'
L16	N08°58'28"E	4.53'
L17	N10°22'10"W	3.61'
L18	N24°56'30"W	5.96'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	23.75'	24.00'	56°42'36"
C2	24.83'	22.00'	64°40'40"



SCALE IN FEET: 1" = 80'

EXHIBIT "A"
PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR PARCEL "A"
 A PORTION OF "PARCEL 1" AND "PARCEL 1A" AS DESCRIBED IN THE DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED JUNE 23, 1975 IN BOOK B476, PAGE 309, AND A PORTION OF "PARCEL 2" AS DESCRIBED IN THE DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED JULY 16, 1984 IN BOOK I721, PAGE 416, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA
 CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

Ruggeri - Jensen - Azar & Associates
 ENGINEERS • PLANNERS • SURVEYORS
 8055 CAMINO ARROYO • GILROY, CA 95020
 PHONE: (408) 848-0300 • FAX: (408) 848-0302

SCALE: 1" = 80' DATE: 9-12-2006 JOB NO.: 032011

EXHIBIT - A

EXHIBIT "A"
LEGAL DESCRIPTION OF A STREET RIGHT-OF-WAY
PARCEL "B" (MACHADO AVENUE BRIDGE)

All that real property situated in the City of Milpitas, County of Santa Clara, State of California, described as follows:

A portion of "Parcel 1" and "Parcel 1A", as described in the deed to the Santa Clara Valley Water District, recorded June 23, 1975 in Book B476, Page 309, Official Records of Santa Clara County, California, and a portion of "Parcel 2", as described in the deed to the Santa Clara Valley Water District, recorded July 16, 1984, in Book 1721, Page 416, Official Records of Santa Clara County, California, being more particularly described as follows:

Commencing at the point of intersection of the monument line of Abel Street, with the prolongation of the northerly line of "Parcel C", as shown on that certain Record of Survey Map filed March 7, 1963, in Book 157 of Maps, at Page 56, Records of Santa Clara County, California; thence running along said northerly line and the prolongation thereof

- a) S66°02'30"W, a distance of 43.21 feet to a point on the easterly line of said "Parcel 2", said point being the **TRUE POINT OF BEGINNING**; thence leaving said prolongation and running along said easterly line
- 1) S10°22'10"E, a distance of 110.20 feet to a point of cusp, and the beginning of a non-tangent curve to the left, from which the radius point bears S71°36'44"W, a radial distance of 22.00 feet; thence leaving said easterly line
- 2) Westerly along said curve, through a central angle of 81°54'17", a distance of 31.45 feet; thence
- 3) S79°42'27"W, a distance of 34.19 feet to the beginning of a tangent curve to the left having a radius of 28.00 feet; thence
- 4) Southwesterly along said curve, through a central angle of 21°02'06"; a distance of 10.28 feet to a point on the westerly line of said "Parcel 1"; thence running along said westerly line
- 5) N10°22'10"W, a distance of 60.23 feet; thence continuing along said westerly line
- 6) N82°33'20"W, a distance of 31.51 feet to a point on the northerly line of said "Parcel C"; thence leaving said westerly line and running along said northerly line
- 7) N66°02'30"E, a distance of 98.76 feet to the **TRUE POINT OF BEGINNING**.

Containing 5,855 square feet or 0.134 acres, more or less.

All bearings and distances shown herein are on the California State Plane Coordinate System of 1983(1991.35), Zone 3. Multiply grid distances herein by 1.00005493 to obtain ground level distances.

END OF DESCRIPTION.

A plat showing the above-described area is attached hereto and made a part hereof.

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



Andrew S. Chafer

Andrew S. Chafer, PLS 8005
Expires 12/31/06

10/3/06
Date

RECORD WITHOUT FEE UNDER SECTION 6103
GOVERNMENT CODE OF THE STATE OF CALIFORNIA

AFTER RECORDING RETURN TO:
REAL ESTATE SERVICES UNIT
SANTA CLARA VALLEY WATER DISTRICT
5750 ALMADEN EXPRESSWAY
SAN JOSE, CALIFORNIA 95118

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 086-05-012 (Portion)

GRANT DEED

DOCUMENT NO.: 4033-32.04

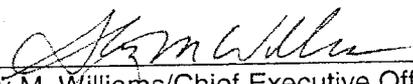
For valuable consideration, receipt of which is hereby acknowledged, **SANTA CLARA VALLEY WATER DISTRICT**, a public entity, hereinafter "Grantor," does hereby grant to the **CITY OF MILPITAS**, a municipal corporation, hereinafter "Grantee", all that real property in the City of Milpitas, County of Santa Clara, State of California;

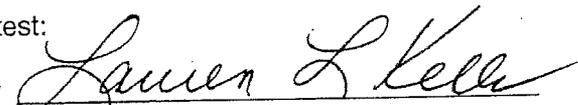
As described and depicted in Exhibit "A", parcel A and parcel B, pages 1 through 6, attached hereto and made a part hereof.

RESERVING unto Grantor an easement for ingress and egress and the right to construct, reconstruct, inspect, maintain, and repair a channel, protection works, and appurtenant structures, together with the right to trim or remove such trees or brush within the easement area as may constitute a hazard to persons or property or may interfere with the use of said area for the purpose granted. Said easement area shall be kept clear of any type of building, fences, or trees unless prior written approval is obtained from the District. The easement shall include the right to enter upon said land with vehicles, tools, implements, and other materials, take there from and use earth, rock, sand, and gravel for construction, maintenance, and repair of said channel, protections works, and appurtenant structures by said District, its officers, agents, and employees, and by persons under contract with it and their employees whenever and wherever necessary for flood control or storm drainage purposes.

Dated this 28th day of November, 2006.

SANTA CLARA VALLEY WATER DISTRICT

By 
Stanley M. Williams/Chief Executive Officer

Attest:
By 
Clerk/Board of Directors

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA } SS

On this 4th day of December, in the year 2006, before me Michele L. King

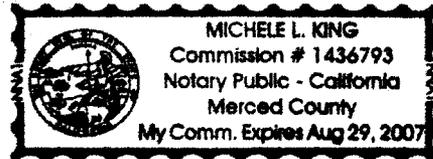
Notary Public, personally appeared Stanley M. Williams
Name(s) of Signer(s)

personally known to me -OR- 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.

WITNESS my hand and official seal.

Michele L. King
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): CEO Guardian/Conservator
- Partner (s) Limited General Other: _____
- Attorney-In-Fact _____

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

EXHIBIT "A"
LEGAL DESCRIPTION OF A STREET RIGHT-OF-WAY
PARCEL "B" (MACHADO AVENUE BRIDGE)

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- a) S66°02'30"W, a distance of 43.21 feet to a point on the easterly line of said "Parcel 2", said point being the **TRUE POINT OF BEGINNING**; thence leaving said prolongation and running along said easterly line
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- 5) N10°22'10"W, a distance of 60.23 feet; thence continuing along said westerly line
- 6) N82°33'20"W, a distance of 31.51 feet to a point on the northerly line of said "Parcel C"; thence leaving said westerly line and running along said northerly line
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Containing 5,855 square feet or 0.134 acres, more or less.

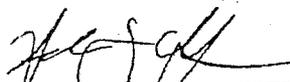
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END OF DESCRIPTION.

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





Andrew S. Chafer, PLS 8005
Expires 12/31/06

10/3/06
Date

LEGEND

- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- PROPERTY BOUNDARY LINE
- MONUMENT LINE
- EXISTING LOT LINE
- NEW RIGHT-OF-WAY LINE
- TIE LINE
- [Hatched Box] RIGHT-OF-WAY AREA (5855 SF±)
- SCVWD SANTA CLARA VALLEY WATER DISTRICT
- (T) TOTAL DIMENSION
- (R) RADIAL BEARING

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	31.45'	22.00'	81°54'17"
C2	10.28'	28.00'	21°02'06"
C3	22.48'	22.00'	58°33'25"
C4	8.96'	22.00'	23°20'52"



SCALE IN FEET: 1" = 30'

LINE TABLE		
LINE	BEARING	DIST
L1	N79°42'27"E	34.19'

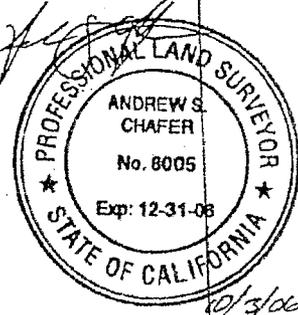
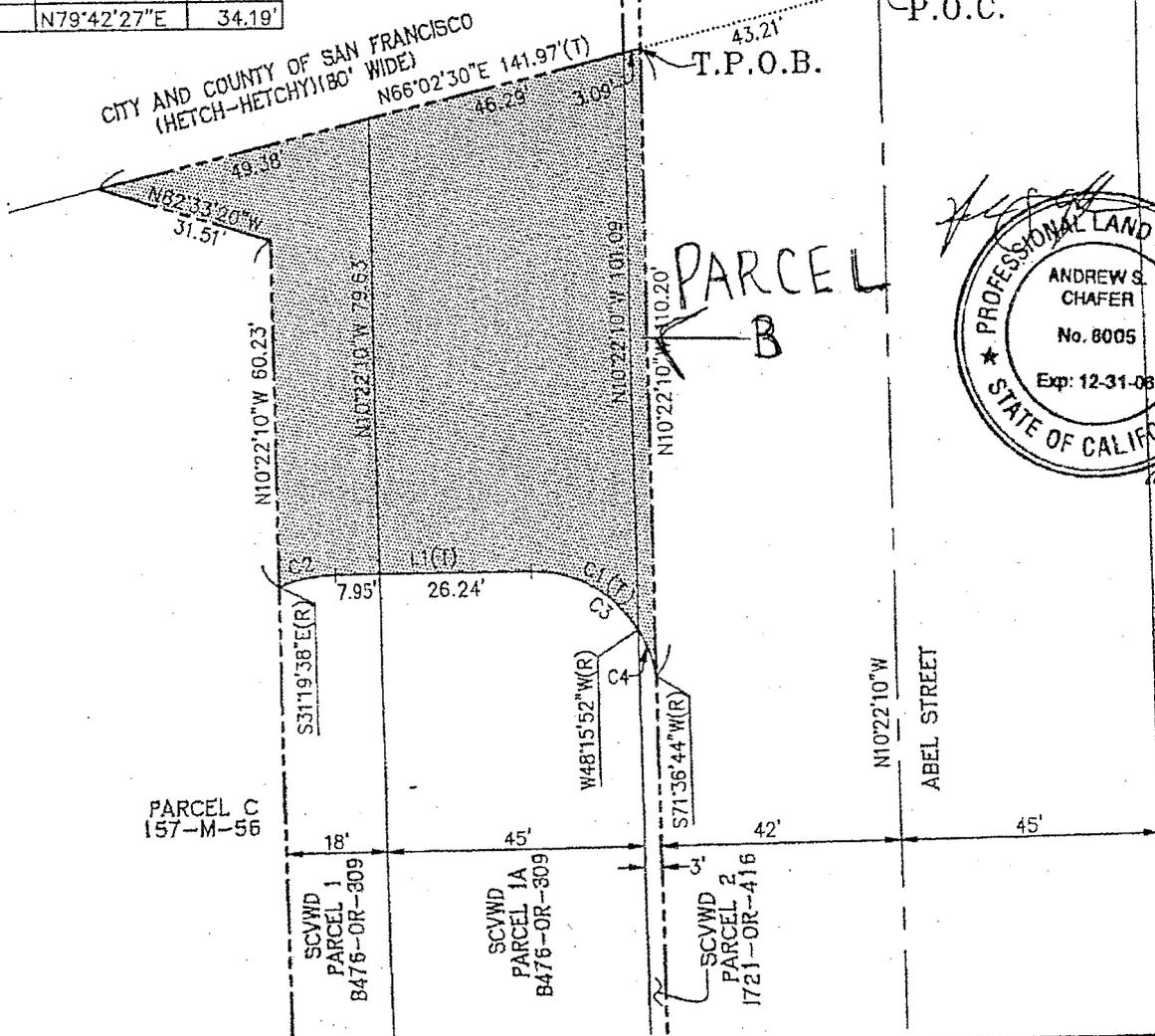


EXHIBIT "A"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR PARCEL "B"

A PORTION OF "PARCEL 1" AND "PARCEL 1A", AS DESCRIBED IN THE DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED JUNE 23, 1975 IN BOOK B476, PAGE 309, AND A PORTION OF "PARCEL 2" AS DESCRIBED IN THE DEED TO THE SANTA CLARA VALLEY WATER DISTRICT, RECORDED JULY 16, 1984 IN BOOK I721, PAGE 416, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA
 CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

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 PHONE: (408) 848-0300 • FAX: (408) 848-0302

SCALE: 1" = 30' DATE: 9-12-2006 JOB NO.: 032011

EXHIBIT - A