

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SURFACE PARKING LOT, THE REMOVAL OF 55 ORDINANCE-SIZE TREES AND 14 NON-ORDINANCE TREES, AND THE CONSTRUCTION OF ONE SIX-STORY MIXED USE BUILDING WITH 13,590 SQUARE FEET OF COMMERCIAL SPACE AND 239 MARKET-RATE MULTIFAMILY RESIDENTIAL UNITS AND ONE FIVE-STORY MULTIFAMILY RESIDENTIAL BUILDING WITH 89 AFFORDABLE HOUSING UNITS, WITH IMPROVEMENTS TO THE CANOAS CREEK TRAIL AND EXTENDED CONSTRUCTION HOURS TO INCLUDE SATURDAYS FROM 8:00 A.M., TO 5:00 P.M ON A 5.39-GROSS ACRE SITE LOCATED NORTH OF BLOSSOM HILL ROAD, APPROXIMATELY 300 FEET EASTERLY OF CHESBRO AVENUE (605 BLOSSOM HILL ROAD)

FILE NO. SP20-012

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 15, 2020, an application (File No. SP20-012) was filed by the applicant, Melissa Durkin of Green Republic Blossom Hill LLC, on behalf of owner Santa Clara Valley Transportation Authority, with the City of San José for a Special Use Permit to allow the demolition of an existing surface parking lot, the removal of 55 ordinance-size trees and 14 non-ordinance trees, and the construction of a one six-story mixed use building with 13,590 square feet of commercial space and 239 market-rate multifamily residential units, and one five-story multifamily residential building with 89 affordable housing units, with improvements to Canoas Creek trail, on a 5.39-gross acre site, and extended construction hours to include Saturdays from 8:00 a.m. to 5:00 p.m. , on that certain real property situated in the A Agriculture Zoning District and located north of Blossom Hill Road, approximately 300 feet easterly of Chesbro Avenue (605 Blossom Hill Road, San José, which real property is sometimes referred to herein as the

“subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” and depicted in Exhibit “B,” entitled “Parcel Map,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said concurrent applications on July 13, 2022, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, this City Council received and considered the reports and recommendation of the Planning Commission and the City’s Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Special Use Permit for VTA Blossom Hill Station TOD" dated December 9, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before this City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the north side of Blossom Hill Road, approximately 300 feet easterly of Chesbro Avenue. The subject site is 7.42 acres and is currently developed with a 542-space surface parking lot to support the adjacent Santa Clara Valley Transportation Authority (VTA) Blossom Hill light rail station, VTA bus stop, landscaping and ornamental trees. The project site is bordered by State Route (SR) 85 to the north and the exit ramp to the east. The Blossom Hill VTA Station is also located to the north of the site, and the VTA light rail runs down the center of SR 85 with access to the Blossom Hill Station provided at the project site. Located south of the project site is Blossom Hill Road, a six-lane street divided by a median. Directly across Blossom Hill Road from the project site is Samaritan Medical Care Center, a medical office use. To the west is the Canoas Creek riparian area, and on the other side of the creek are one- and two-story single-family residences and a small retail commercial building facing Blossom Hill Road.

2. **Project Description.** A Special Use Permit to allow the development of 5.39 acres within the southern and eastern portions of the 7.42-acre site with a Signature Project per Policy IP-5.10 of the San José General Plan, including the demolition of existing surface parking, the removal of 55 ordinance-size trees and 14 non-ordinance trees, and the construction of one six-story mixed use building with 13,590 square feet of commercial space and 239 market-rate multi-family residential units and one five-story multifamily residential building with 89 affordable housing units. Of the 89 units restricted for affordable housing (27%), 58 units (18%) are reserved for Extremely Low-Income households, 6 units (2%) are reserved for Very Low-Income households, and 23 units (7%) are reserved for Low-Income households, as defined in California Code Section 65915. The project also includes improvements to the Canoas Creek trail, directly adjacent to the west of the project site, and extended construction hours to allow construction beyond Monday through Friday from 7:00 a.m. to 7:00 p.m. to include Saturdays from 8:00 a.m. to 5:00 p.m.

Due to the location of the trail improvements on land owned by other agencies, permitting and approval for this project component would be required from VTA, Caltrans, Valley Water, and the County of Santa Clara. These improvements include upgrading an existing Valley Water gravel access road along Canoas Creek to an approximately 0.6-mile, 10- to 12-foot-wide paved asphalt concrete pedestrian/bicycle trail between Blossom Hill Road and Martial Cottle Park. The permittee will be required to record an easement benefitting the City of San José as grantee under the easement for maintenance and access over the trail area.

The remaining 2.03 acres in the northern half of the project site is not part of the subject project. This area will be retained by VTA and reconfigured into a new 212-space parking lot to allow for better circulation and redevelopment of the existing transit plaza adjacent to the Blossom Hill light rail station entrance.

The project is associated with a Vesting Tentative Map to allow the subdivision of two existing parcels comprising the site into five parcels on 7.42-gross acres. Parcel 1 is the area that will be retained and reconfigured for VTA parking. After the subdivision, Parcel 2 is the area reserved for the Canoas Creek trail, Parcel 3 is the area for the multifamily affordable housing building, Parcel 4 is the area for the mixed-use market-rate housing with ground-floor commercial, and Parcel 5 is the area for the Transit Plaza, a privately owned and maintained public open space.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan land use designation of Neighborhood/Community Commercial. This designation supports a very broad range of commercial activity that have strong connections to and provide services and amenities for the nearby community. This designation supports development projects up to 3.5 floor-area ratio (FAR). The project is also within the Blossom Hill Road/Cahalan Avenue Urban Village area, which does not yet have an adopted Urban Village Plan. At the moment, there is no

identified timeline for the drafting and adoption of an Urban Village Plan for the area.

Analysis: The project includes a gross square footage of 508,539, which results in a 1.57 FAR, consistent with the FAR requirement. Residential and mixed-use projects are not permitted within the Neighborhood/Community Commercial land use designation unless the project meets Policy IP-5.10 for Signature Projects. The project is analyzed for consistency with the Signature Project Policy below.

Policy IP-5.10 Signature Project Analysis

The Signature Project policy allows residential and mixed-use projects to proceed ahead of an Urban Village Plan adoption if the project meets certain requirements related to residential density, project design, and the provision of employment space, parks and/or public and privately accessible open space on site. These requirements were updated in December 2021 to include additional requirement, but since the project submitted a complete Planning application prior to the adoption of the updated policy, the previous requirements apply, as follows:

1. Incorporates job growth capacity above the average density of jobs per acre planned for the developable portions of the entire Village Planning area and, for portions of a Signature Project that include housing, those portions incorporate housing density at or above the average density of dwelling units per acre planned for the entire Village Planning area.

Analysis: Per the General Plan Land Use Policy Chapter, within Growth Areas, new residential development is planned to occur at a density of at least 55 dwelling units per acre (DU/AC), which is the number where the City can provide services to new residential development without incurring additional costs for providing the new services. The project meets this criterion with 80.7 DU/AC for the mixed-use building and 90.8 DU/AC for the affordable multifamily residential building.

Based on the project site area, the development must provide at least 22,596 square feet of commercial area per this requirement. This is calculated using a rough estimate of 300 square feet per one job, which would result the creation of approximately 75 jobs. The project, with 13,590 square feet of commercial space, would create approximately 45 jobs and does not meet this criterion. However, the project applicant has requested a Density Bonus Incentive to reduce the required commercial square footage. The project has been deemed eligible for Density Bonus under State Law (Government Code Section 65915). Therefore, the reduced commercial space is allowed as an incentive as described in the Density Bonus Section below.

2. Includes public parklands and/or privately maintained, publicly-accessible plazas or open space areas.

Analysis: The Canoas Creek Trail improvements and on-site plaza and public open space areas include approximately 2.23 acres of public open space amenities and are consistent with this policy requirement, as follows:

- a. *Canoas Creek Trail Improvements: As previously described, as part of the project, the existing eight-foot wide Valley Water gravel access road along Canoas Creek would be improved and extended to an approximately 0.6-mile, 10- to 12-foot-wide paved asphalt concrete pedestrian/bicycle trail between Blossom Hill Road and Martial Cottle Park. The trail would be located on the east side of Canoas Creek and would follow the natural slope of the land. Additionally, two trailhead plazas would be constructed on-site to mark the entrance of the trail at Blossom Hill Road and another in the northwest corner of the project site marking the direction to the Blossom Hill light rail station. The on-site trail improvements would cover approximately 28,000 square feet.*
 - b. *On-Site Public Plaza and Open Space Areas: In addition to the Canoas Creek trail improvements, the project's outdoor public amenities include an 18,000 square foot transit plaza located at the entrance to the transit station, a 5,900 square foot public open space area, and a 22,800 square foot public path, as shown on Sheet L300 of the project plans. These open space and trail areas will be privately owned public amenity areas. With the exception of the Canoas Creek trail improvements, which will be maintained by the City of San Jose, all other open space areas will be privately maintained.*
3. Achieves the pedestrian friendly design guideline objectives identified within this General Plan.

Analysis: The project is consistent with the following General Plan Community Design objectives relating to pedestrian orientation:

- a. Policy CD-1.7: Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public rights-of-ways.

Per the project Landscape Plans, pedestrian areas will include shade trees, site wayfinding directional signs, sculptural seat walls, natural seating elements, architectural site lighting, specialty paving, interactive sculptural elements, and site furniture. The project is also planning to install sidewalk seating along Blossom Hill Road in front of the ground floor commercial use. The project is consistent with this finding.

- b. Policy CD-1.11: To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries

oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and pathways; avoid blank walls that do not enhance the pedestrian experience. Encourage inviting, transparent façades for ground-floor commercial spaces that attract customers by revealing active uses and merchandise displays.

Mixed-Use Building – The building façade along Blossom Hill Road include windows and pedestrian entries facing the sidewalk, with active building ground floor uses facing the street. The frontage along the driveway includes awnings, windows, and pedestrian entrances facing the sidewalk. The façade materials are varied and include a combination of stone and smooth painted stucco, along with decorative metal garage screens with landscaped trellises.

Multifamily Residential Building – The building façade along Blossom Hill Road is similarly varied with stone, smooth painted stucco, and decorative mosaic tile materials. Windows, awnings, and pedestrian entrances face the street. The building includes active ground floor uses. The main pedestrian entry is arched for an inviting, architecturally pleasing pedestrian experience.

- c. Policy CD-1.24: Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.

All parts of the development are connected to each other with sidewalks, including the paseo, the creek improvements, the station entrance, and both buildings. The project also provides wayfinding signage for easy accessibility to all the components of the project. The sidewalks are lined with trees, seating, and lighting to provide safe, convenient, and accessible connections.

- d. Policy CD-2.3: Create easily identifiable and accessible building entrances located on street frontages or paseos.

The main pedestrian entrances along the driveway at both buildings are prominent and identifiable to pedestrians, cyclists, and motorists. As described above, the main pedestrian entrance of the mixed-use building is identified by a large awning on the corner of Blossom Hill Road and the project access driveway, and the main pedestrian entrance of the multifamily residential building is identified by arched architectural features and a setback doorway for depth.

4. Is planned and designed through a process that provided a substantive opportunity for input by interested community members.

Analysis: The City held a virtual Joint Environmental Scoping and Community

Meeting on October 13, 2020. There were approximately 24 members of the public in attendance at the meeting. See the City Council Policy Consistency section below for additional information about issues discussed. In addition, there were multiple VTA Access Study outreach meetings with the community, including the following:

Community Meeting – Visioning: January 24, 2018

VTA Board Public Hearing: March 1, 2018

Community Meeting – Project Schedule: October 25, 2018

VTA Board Public Hearing – Program Approval: March 7, 2019

Community Meeting – Meet the Developer: May 15, 2019

Community Meeting – Update: September 9, 2020

VTA's website includes project details and topics of discussion during each of the community meetings. The information can be found on VTA's website: <https://www.vta.org/projects/blossom-hill-station-transit-oriented-development>. The project is consistent with this requirement.

5. Demonstrates high-quality architectural, landscape and site design features.

Analysis: The City's Planning Division urban design review staff reviewed the project and made specific recommendations regarding the architecture, landscaping, and site design features. These recommendations are discussed below. In addition, the project includes stucco and cast trim materials, which are not considered high-quality materials; however, they are standard quality, durable materials commonly used in new residential building exterior construction. The project is requesting the use of these materials as affordable alternatives under a Density Bonus Incentive Request. The project has been deemed eligible for Density Bonus under State Law (Government Code Section 65915). Therefore, the more affordable material alternatives are allowed as an incentive as described in the Density Bonus Section below.

6. Is consistent with the recommendations of the City's Architectural Review Committee or equivalent recommending body if the project is subject to review by such body.

Analysis: Planning Division urban design staff reviewed the project and provided several design recommendations addressing materials, façade details, and site design features. In response, the project design was revised to include stone and limestone panels on the ground floor and smooth textured stucco on the upper floors, awnings in front of functional doors and louvers in front of windows, consistent and complimentary earth-tone colors, the incorporation of additional Mediterranean Traditional design elements, recessed windows to add visual

interest and additional light and shadow, equally high-quality façade materials on the affordable building as the mixed-use building, and traditional Mediterranean-style sloped tile roofs.

To address specific site design features, the project was revised to remove a surface parking lot behind the affordable building, increase the depth of the commercial space in the mixed-use building, provide more prominent and identifiable pedestrian entries, provide additional open space along the creek, and the open space in front of the station entrance was redesigned to be contiguous.

Based on the above, the project is consistent with Signature Project Policy IP-5.10.

General Plan Policies

In addition to the requirements of the Signature Project Policy IP-5.10, the project is also consistent with the following key General Plan policies:

1. Major Strategy #3 - Focused Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods.
2. Growth Area Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified “Growth Areas” in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.
3. Commercial Lands Policy LU-4.3: Concentrate new commercial development in identified growth areas and other sites designated for commercial uses on the Land Use/Transportation Diagram. Allow new and expansion of existing commercial development within established neighborhoods when such development is appropriately located and designed.
4. Public Transit Goal TR-3: Maximize use of existing and future public transportation services to increase ridership and decrease the use of private automobiles.
5. Maximize Use of Public Transit Policy TR-3.4: Maintain and improve access to transit stops and stations for mobility-challenged population groups such as youth, the disabled, and seniors.

Analysis for Major Strategy 3, Policy LU-2.1, Policy LU-4.3, Goal TR-3, and Policy TR-3.4: The project is within the Blossom Hill Road/Cahalan Avenue Urban Village area and is sited immediately adjacent to the Blossom Hill VTA light rail station. The project would provide a high intensity transit-oriented development on the subject site consistent with General Plan major strategy, and policies supporting focused growth and development near transit. High intensity development near transit maximizes land near transit and encourages the use of public transit while reducing vehicle miles traveled.

- 4. Zoning Ordinance Consistency.** The subject site is currently located in the A Agriculture Zoning District. However, California Assembly Bill 3194 (AB 3194) stipulates that a housing project located on a site that is consistent with the policies and objectives of the General Plan cannot be required to rezone, even if the existing zoning of the site is not consistent with the General Plan. Instead, the local agency shall evaluate the project and apply the zoning district that is consistent with the General Plan land use designation of the site. The CP Commercial Pedestrian District, which is the zone most in conformance with the General Plan designation is applied, which allows mixed residential/commercial development, for which consistency is analyzed below:

Land Uses

Pursuant to the Zoning Code Section 20.120.110, the CP Commercial Pedestrian Zoning District is a conforming zoning district to the Neighborhood/Community Commercial General Plan land use designation. The purpose of the CP Zoning District is to support pedestrian-oriented retail activity at a scale compatible with surrounding residential neighborhoods. Per Table 20-90 of the Zoning Code, mixed-use residential/commercial uses are allowed in the CP Zoning District within an Urban Village Plan Area with the approval of a Special Use Permit.

Analysis: In the CP Commercial Pedestrian Zoning District within an Urban Village Plan Area, mixed-use residential/commercial projects are permitted with a Special Use Permit.

Development Regulations

The project conforms to the CP Commercial Pedestrian Zoning District development standards, beginning with Zoning Section 20.40.200, as discussed below.

1. **Setbacks:** The following table illustrates the setbacks in the CP Zoning District found in Table 20-100.

CP District Requirement		Proposed (Building A)	Proposed (Building B)
Front	No minimum, 10 feet	4 feet	9.2 feet

	maximum		
Side	None	26 feet	15 feet
Rear	25 feet minimum	27 feet	26 feet

Analysis: The project is consistent with the setback requirements.

2. Height: The maximum height of new construction is 120 feet within Urban Village Plan boundaries per Section 20.85.020.E of the Zoning Code.

Analysis: The mixed-use building has a maximum of height of 75.5 feet and the affordable multifamily residential building has a maximum height of 61 feet, which is within the allowed height limit. The project is therefore consistent with the height requirements.

3. Vehicle Parking: The number of vehicle parking spaces required for the ground-floor commercial use within the mixed-use building is one space per 400 square feet of net floor area (85 percent of gross square feet) per Section 20.90.220.C of the Zoning Code. Based on the gross commercial floor area of 13,590 square feet, the net floor area is 11,552 square feet, and the required parking for the commercial area is 29 spaces.

The number of vehicle parking spaces required for the residential portion of the mixed-use building and the affordable multifamily residential building is per the State Density Bonus Law. Per Section 65915(p) of the California Government Code, rental projects that are at least 11% affordable to very-low income within 1/2 mile of an accessible major transit stop have a vehicular parking space requirement of 0.5 space per unit. There are 239 units included in the mixed-use building and 89 units in the affordable multifamily residential building, which is a total of 328 units and results in a total parking requirement of 164 spaces.

Analysis: The project is required to provide a total of 29 spaces for commercial use and 164 spaces for residential use. The project includes 34 parking spaces for the commercial use and 364 spaces for the residential use. The project is consistent with the parking requirement in that it exceeds the parking requirements by 205 parking spaces.

4. Bicycle Parking: The project is required to provide one bicycle space per 3,000 square feet of net commercial floor area and one space per four units of residential use. This results in four commercial bicycle spaces, 60 bicycle spaces for the mixed-use building, and 23 bicycle spaces for the affordable multifamily residential units required for the project.

For commercial spaces, at least eighty percent of the bicycle parking spaces shall be provided in short-term bicycle parking facilities and at most twenty percent shall be provided in long-term bicycle facilities. For residential units,

bicycle parking spaces shall consist of at least sixty percent long-term and at most forty percent short-term spaces. This calculates to three long-term spaces and one short-term space for the commercial use and 50 long-term spaces and 33 short-term spaces for the residential use for a total of 51 long-term spaces and 36 short-term spaces required.

Analysis: The project includes 232 long-term bicycle parking spaces within a secure bicycle storage room on the ground floor of the mixed-use building, and 75 short-term bicycle parking spaces provided on racks. The project is therefore consistent with the requirement.

5. Loading Spaces: This project requires one loading space per Section 20.90.410 of the Zoning Code. The loading space must be ten feet wide, thirty feet long and fifteen feet high, exclusive of driveways for ingress and egress and maneuvering areas per Section 20.90.420.

Analysis: The project includes one loading space in front of the mixed-use building along the driveway. The loading space is 40 feet long by 12 feet wide and is at the curb with no structure above it. This meets the requirement for the loading space.

5. San José Residential Guidelines Consistency

The project was analyzed for consistency with applicable Residential Design Guidelines (1999). Per Senate Bill 330, effective January 1, 2020, only objective standards and guidelines can be applied to certain affordable housing projects. Objective standards per SB 330 must be measurable and quantifiable.

The updated Citywide Guidelines were adopted on February 23, 2021 and effective March 25, 2021. These updated guidelines include objective standards in response to the requirements of SB 330. The subject project, submitted on April 15, 2020, was submitted prior to the effective date of the new guidelines and therefore subject to the 1999 Residential Design Guidelines.

The project complies with the following key guidelines from the 1999 Residential Design Guidelines below:

Chapter 10.A. Private and Common Open Space. A minimum of 100 square feet of Common Open Space and 60 square feet of Private Open Space, with a minimum 6 feet of width, is required per each unit.

Analysis: Under this section, the project would be required to provide 32,800 square feet of common open space and 19,680 square feet of private open space. The project includes 26,905 square feet of common open space on the mixed-use parcel and 19,376 square feet on the affordable multifamily residential parcel, resulting in a total of 46,281 square feet of common open space for the project. This is consistent

with the requirements.

A Density Bonus Incentive request was received to reduce the private open space requirement from 19,680 square feet to 11,693 square feet. The project has been deemed eligible for Density Bonus under State Law (Government Code Section 65915). Therefore, the reduced private open space request is allowed as an incentive as described in the Density Bonus Section below.

Chapter 11.A Façade Articulation. All building facades containing 3 or more attached dwellings in a row should incorporate at least one of the following:

1. At least one architectural projection per unit. Such a projection must project no less than 2 feet 6 inches from the major wall plane, must be between 4 feet 6 inches and 15 feet wide, or
2. A change in wall plane of at least 3 feet for at least 12 feet or every 2 units.

Analysis: The windows, window treatments, and architectural projections provided with the project design is consistent with the façade articulation guidelines. There is at least one projection, change in wall plane, or architectural feature that meets this guideline on all facades of the project.

Chapter 11.E. Changes in Materials. The exterior materials and architectural details of a single building should relate to each other in ways that are traditional and/or logical. Material changes not accompanied by changes in plane also frequently give material an insubstantial or applied. There are, however, exceptions to this principle such as the articulation of the base of a building by a change in color, texture or material.

Analysis: As shown in the development plans, the project includes multiple changes in plane, materials, and color throughout all facades of the project. The project incorporates materials and colors that relate to each other between the two buildings. Some changes to materials and textures are intended as focal points, including the large mural on the east side of the mixed-use building on the corner of Blossom Hill Road and the Caltrans off-ramp. The project is consistent with this guideline.

6. State Density Bonus Law Consistency (Government Code Section 65915)

In order to qualify for the provisions of the State Density Bonus Law, a project must include at least 5% of the housing units as restricted for very-low income households or at least 10% of the units restricted for low-income or moderate-income households, as defined in California Code Section 65915. The project includes 89 of the total 328 units restricted for affordable housing (27%), including 58 units (18%) for Extremely Low-Income households, 6 units (2%) for Very Low-Income households, and 23 units (7%) for Low-Income households. The project is therefore eligible for the provisions of

the density bonus, waivers, and incentives/concessions under the State Density Bonus Law.

Density Bonus: There is no maximum density limit in the General Plan designation. However, the project is eligible for incentives and waivers by including the required percentages of affordable units. The project does not include a request for an increase in density, but only needs to be eligible for a density bonus in order to pursue incentives and concessions, such as reductions in development standards to facilitate the economically viable construction of affordable housing.

Incentives: Projects that are eligible for a density bonus are also eligible to pursue incentives and concessions, such as reductions in development standards to facilitate the economically viable construction of affordable housing. Because the project is providing over 15% of the total units as extremely low-income and very low-income, the project qualifies for three incentives per Section d.2.c of Government Code Section 65915.

The project has therefore requested three incentives, as follows:

Incentive 1: Private Open Space.

The development standard pursuant to the Residential Design Guidelines, Chapter 10.A, requires a minimum of 60 square feet of private open space per unit, for a total of 19,680 square feet of private open space. The applicant has requested that the development standard be decreased to allow Building A to have 154 units with private open space for a total of approximately 11,693 square feet and allow for Building B to have no private open space.

More than 60% of the Affordable Housing units will be made available to households earning extremely low-incomes, half of which are to be set aside for tenants qualifying under Permanent Supportive Housing guidelines. Best practice within affordable and mixed-income communities is to encourage social integration and to discourage isolation. Common area open space is therefore encouraged, while conversely private patios/balconies are discouraged. The project incorporates significant common area open space amenities and features, as described in the General Plan Consistency section above

As described in the Density Bonus Request letter from the applicant dated November 19, 2021, the requested concession would reduce the average cost per unit from \$654,370 to \$636,941, resulting in a total reduction of \$17,429 per unit. Without the requested concession, the project is not viable and cannot be constructed.

As a result of the decreased costs, the project would be viable and can be constructed. Cost savings will go toward the affordability of the units. Therefore, the incentive request to decrease the required private open space from 19,680

square feet to 11,693 square feet results in actual and identifiable cost reductions and can be granted.

Incentive 2: Commercial Square Footage.

The development standard pursuant to General Plan Signature Project Policy IP-5.10, requirement #1, requires a total of 22,595 square feet of commercial area to be provided with the project. The applicant has requested that the development standard be reduced to 13,590 square feet of commercial space.

This incentive supports the economic viability of the Affordable Housing building and allows for an efficient mix of ground-floor common-area and supportive services.

As described in the Density Bonus Request letter from the applicant dated November 19, 2021, reducing the commercial square footage requirement would reduce the average cost per unit from \$730,994 to \$636,941, resulting in a total reduction of \$94,053 per unit. Without the requested concession, the project is not viable and cannot be constructed.

As a result of the decreased costs, the project would be viable and can be constructed. Cost savings will go toward the affordability of the units. Therefore, the incentive request to reduce the side setback results in actual and identifiable cost reductions and can be granted.

Incentive 3: High-Quality Materials.

The development standard pursuant to General Plan Signature Project Policy IP-5.10, requirement #5, requires high-quality architectural, landscape and site design features to be provided with the project. The applicant has requested that the development standard be modified to allow lower cost material alternatives, including smooth-finish stucco and cast foam core trim materials, where the City would normally not allow these materials on primary elevations in a Signature Project.

The use of stucco or other standard-quality materials on the ground floor of the buildings would normally not be permitted in a Signature Project development, and stucco on the upper levels would be required to be a smooth-textured stucco. The project was modified from the original submittal to include a mix of stone paneling with a smooth-textured stucco on the first two floors. The stone paneling is placed on the most visible building elevations. Floors 3 through 5 include stucco but with a fine texture stucco finish, instead of a smooth-texture finish. The fine texture stucco finish provides a material change distinguishing the ground and second floor levels from the upper levels. The fine texture stucco finish is less likely to show imperfections/cracking, and when viewed from the ground level will not appear significantly different from a smooth finish.

Coated foam core trim is a standard quality material, and not considered a higher-quality material consistent with Signature Project criteria, such as cast concrete. The project design includes foam core trim as a lower-cost material that is used to reduce material weight while also being durable. A lightweight limestone material called New Cast Stone will be used for all trim on the first and second floors which has a thicker exterior coating than the composite core trim on the upper floors, as shown in the Final Plan Set (Exhibit H). This will ensure the most durable material is used where it comes into contact with people.

As described in the Density Bonus Request letter from the applicant dated November 19, 2021, reducing the high-quality materials requirement would reduce the average cost per unit from \$683,370 to \$636,941, resulting in a total reduction of \$46,429 per unit. Without the requested concession, the project is not viable and cannot be constructed.

As a result of the decreased costs, the project would be viable and can be constructed while maintaining affordability of the units. Therefore, the incentive request to reduce the requirement for high-quality materials results in actual and identifiable cost reductions and can be granted.

7. City Council Policy Consistency

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is considered to be a large development. Large development projects are required to provide Early Notification by website, email, postcard mailed to property owners and tenants within a 1,000-foot radius, and by on-site signage. Following City Council Policy 6-30, the required on-site sign has been posted at the site since May 1, 2020, to inform the neighborhood of the project. A community meeting was held to discuss the project on, October 13, 2020 via Zoom webinar. Approximately 27 members of the public were in attendance for the meeting. Comments received during the community meeting and project review are discussed below in the Public Outreach section. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design

The purpose of the policy is for the protection, preservation and restoration of riparian habitat. The policy provides general guidelines for riparian corridor protection and requires a minimum 100-foot setback from a riparian corridor's top of bank or a vegetative edge, whichever is closest, to minimize intrusion into the

riparian corridor, and allows consideration of reduced setbacks under limited circumstances. A riparian project is a project that requires approval of a development permit, that is within 300 feet of a riparian corridor's top of bank or vegetative edge, whichever is greater.

The project is required to be evaluated for conformance with this policy as it is proposing several uses within the minimum 100-foot setback to the adjacent Canoas Creek. As outlined in the policy, trails may enter the Riparian Corridor where necessary for continuity. Passive recreational uses have a 0-foot setback. Active recreational uses, roads, and new residential/commercial buildings must provide a minimum 100-foot setback. The active recreational uses adjacent to the affordable building is shown on the plans at a 35-foot setback from the riparian corridor boundary.

This determination was made based on the analysis of Section A below, which allows a reduced setback for small lower-order tributaries whose riparian influences do not extend the 100-foot setback and other criteria. The project is consistent with the 35-foot setback requirement from the riparian area.

Section A of the policy provides design guidance for riparian projects. Section A.2 states that a reduced setback may be considered under limited circumstances such as:

- a. Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.
- b. Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre.

Analysis for 'a' and 'b': These criteria are not applicable to the project because the subject site is not located within Downtown and is a total of 7.24 acres.

- c. Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback.

Analysis: Canoas Creek is a small lower order tributary. A technical memorandum was prepared for the project by Robin Carle of H.T. Harvey and Associates dated February 7, 2020. The memorandum documents the riparian corridor boundary as the top of the Canoas Creek channel at the adjacent Water District access road. The letter determined the 35-foot wide buffer is sufficient to protect the riparian corridor, since the quality of riparian habitat is low and does not support a diverse wildlife community. Canoas Creek is an engineered trapezoidal channel. The vegetation found within the channel were non-native grasses and forbs.

- d. Sites with unique geometric characteristics and / or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor

setback.

- e. Pre-existing one- or two-family residential lots, or typical yard area, but only where a frontage road is infeasible to buffer Riparian Corridors from these and the Building Setbacks are consistent with all Riparian Corridor setback requirements.

Analysis for 'd' and 'e': These criteria are not applicable to the project as the site is not irregularly shaped, and the existing use of the site is a parking lot.

- f. Sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the Riparian Corridor than the existing use, and where the intensity of the new development will have significantly less environmental impacts on the Riparian Corridor than the existing development.

Analysis: The project's mixed-use development would be more intensive than the existing parking lot use and have a greater impact on the riparian corridor than the parking lot use. However, the project would include the following site improvements: 1) The existing parking lot is within 5 feet of the riparian edge. The parking lot consists of impervious pavement that covers the entire 7.42-acre project site, with the exception of parking lot trees planted throughout the project site. The project would comply with City Council Policy 6-29: Post-Construction Urban Runoff Management to avoid soil erosion and minimize runoff. 2) The project would replace the non-native parking lot trees with native species which are more compatible with the riparian corridor than the existing use. 3) The existing parking lot includes 542 parking spaces that are accessible 24 hours per day and seven days per week. The project would direct all vehicular circulation to the podium parking garage. 4) As discussed below, although the construction and operation of the new building's active uses would be a distance of 35 feet from the riparian edge, per the EIR, the project would have a less than significant project-level environmental impact from the individual project-specific level. Furthermore, the project would be required to implement mitigation measures that would reduce impact from encroachment on riparian birds and habitat and would not result in a substantial adverse effect on any riparian habitat or other sensitive natural community.

- g. Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback.

Analysis: As discussed above, the existing site is a paved parking lot with 542 parking spaces interspersed with non-native parking lot trees. The project would replace the parking lot trees with native trees within 100 feet of the riparian corridor, including an approximately 50-foot wide landscape strip with native vegetation adapted to the Santa Clara Valley watershed along the western edge of the site within the 35-foot riparian setback area, which helps enhance the

riparian value.

- h. Recreational facilities deemed to be a critical need and for which alternative site locations are limited.

Analysis: Most of the area of the site that is encroaching into the 100-foot riparian setback are active recreational uses for the residents of the affordable housing building (Building B), such as a garden and a playground. These activities are a critical need for low-income families, and the nearest public park offering these amenities is over 1.25 miles away at Cahalan Park.

- i. Utility or equipment installations or replacements that involve no significant disturbance to the Riparian Corridor during construction and operation and generate only incidental human activity.

Analysis: This criterion is not applicable to the project, since there are no utility installations within the riparian corridor setback area.

- j. The existence of legal uses within the minimum setback.

Analysis: The existing 7.42-acre site is a legally paved parking lot used as an off-site parking establishment for the Valley Transportation Authority. Approximately 1.78 acres of the site is within the 100-foot riparian setback area, and approximately 0.85 acres will remain a parking lot for the Blossom Hill Transit Station.

- k. The extent to which meeting the required setback would result in demonstrable hardship (i.e. denies an owner any economically viable use of the land or adversely affects recognized real property interest).
- l. The extent to which meeting the minimum setback would require deviations from, exception to or variances from other established policies, legal requirements, or standards.

Analysis for 'k' and 'l': As stated above, most of the area within the 100-foot riparian setback would be used as common open space for the residents of the affordable housing building (Building B). The building itself is set back between 80 and 120 feet from the property line and between 55 and 95 feet from the riparian corridor. Because of the alignment with the intersection of Indian Avenue, the affordable housing building would need to be reduced in size to allow the full 100-feet of setback. However, as described above, the quality of riparian habitat is low and does not support a diverse wildlife community. Canoas Creek is an engineered trapezoidal channel. The vegetation found within the channel were non-native grasses and forbs. The CP Commercial Pedestrian Zoning District has a minimum side setback of zero feet. No deviations from, exception to or variances from other established policies, legal requirements, or standards would be required.

To qualify for the reduced setback, the applicant may illustrate the existence of one or more of the conditions under Section A.3 of the Riparian Policy by a qualified biologist. A technical memorandum was prepared for the project by Robin Carle of H.T. Harvey and Associates dated February 7, 2020. The memorandum documents the riparian corridor boundary as the top of the Canoas Creek channel at the adjacent Water District access road. The letter determined the 35-foot wide buffer is sufficient to protect the riparian corridor, since the quality of riparian habitat is low and does not support a diverse wildlife community. Canoas Creek is an engineered trapezoidal channel. The vegetation found within the channel were non-native grasses and forbs. Based on the information provided by qualified biologist, the project qualifies for a setback reduction due to the following circumstances under Section A.3:

- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.

Analysis: Most of the area within the 100-foot riparian setback would be used as common open space for the residents of the affordable housing building. The building itself is set back between 80 and 120 feet from the property line and between 55 and 95 feet from the riparian corridor. Because of the alignment with the intersection of Indian Avenue, the affordable housing building would need to be reduced in size to allow the full 100-feet of setback. Increasing the setback to active recreational uses would eliminate the garden, playground, and other active recreational uses included with the project for use by the residents of the affordable housing building. These activities are a critical need for low-income families, and the nearest public park offering these amenities is over 1.25 miles away at Cahalan Park.

- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.

Analysis: Based on the technical memorandum prepared for the project referenced above, the quality of riparian habitat is low and does not support a diverse wildlife community. Canoas Creek is an engineered trapezoidal channel. The vegetation found within the channel were non-native grasses and forbs. The 35-foot setback is sufficient to protect the existing riparian corridor.

- c. The proposed uses are not fundamentally incompatible with riparian habitats.

Analysis: Section 1B of the City's Riparian Corridor Policy Study defines land uses that are incompatible with riparian systems to include uses which typically generate littering and/or dumping, off-road vehicle use, removal of native vegetation, uses that create noxious odors or use, store, or create toxic materials, and uses that generate high volumes of vehicular traffic. Portions of the affordable housing building and the active recreational common open spaces

area for use by the residents would be within the 100-foot riparian setback area, in addition to the Canoas Creek trail. There are no off-road vehicle uses proposed within this area. The project would not result in any of the uses defined to be fundamentally incompatible with riparian habitats and the project's land use does not typically result in any of the described incompatible land use categories. Permit conditions for the project require the site and its publicly-used areas to be maintained free of litter, refuse, and debris. Therefore, the project is not fundamentally incompatible with the riparian habitat.

- d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.

Analysis: Canoas Creek is an engineered trapezoidal channel. The project will not result in stream bank erosion.

- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

Analysis: Development of the project will not have negative effects on properties located adjacent or downstream. The project is required to comply with City Council Policy 6-29: Post-Construction Urban Runoff Management to avoid soil erosion and minimize runoff. Stormwater will be treated locally then discharged to the existing storm drain systems. Therefore, the project would not be detrimental or injurious to adjacent and/or downstream properties.

Additionally, in a report dated January 28, 2022, H.T. Harvey & Associates prepared a Bird Collision Hazard Assessment to assess how birds might use resources on and around the project site, and the potential for avian collisions with the façades of the buildings, taking into account the applicant-proposed bird-safe design measures, the location of the proposed buildings relative to food or structural resources (such as vegetation along Canoas Creek) and presumed flight paths, the distance from the towers to those resources, the potential for vegetation to be reflected in the glass façades, and the existing conditions of the façades of other buildings in the vicinity.

The report concluded that the number of bird collisions on the site is expected to be low due to the low numbers of birds expected to occur on the site over the long term and the bird-safe design features included in the project design. Most bird strikes would be by resident species, including common, urban-adapted species that are widespread in urban, suburban, and (for many species) natural land use types throughout the San Francisco Bay area, as opposed to migrant birds. Since the project is consistent with the Riparian Setback requirements and the Bird Safety requirements, the project is consistent with this finding.

8. California Environmental Quality Act.

A Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2020100005, was prepared for the Blossom Hill Station Project (SP20-012 and T20-012) in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The DEIR was circulated for public review and comment from March 10, 2022 through April 25, 2022.

An EIR was prepared because the analysis showed that the project would have a significant and unavoidable transportation impact.

Specifically, the project generated vehicle miles traveled (VMT) would exceed the City's threshold of 10.12 VMT per capita for residential uses in the area by 2.5 VMT per capita. The analysis showed that even with implementation of Mitigation Measure TRA-1.1 which would reduce the impact by 20 percent, the impact would remain above the threshold and therefore would be significant and unavoidable.

Mitigation measures were also developed to lessen the following significant impacts to less than significant levels: exposure of sensitive receptors to toxic air contaminants during construction, disturbance and/or destruction of nesting migratory birds during construction, potential impacts to unrecorded subsurface archaeological resources, exposure of construction workers to residual contamination from agricultural chemicals in the soil, and exposure of sensitive receptors to construction noise.

Standard Permit Conditions are also required to ensure that impacts do not occur during construction and operation of the project. These Standard Permit Conditions include best management practices for construction related air quality impacts, protection of nesting migratory birds, compliance with the Santa Clara Valley Habitat Plan, protection of unknown subsurface cultural resources and human remains, compliance with the California Building Code for seismic safety of the building, erosion control during construction activities, water quality impacts during construction, best management practices to control noise during construction, and achieving an interior noise level of less than 45 decibels (dBA DNL) after construction.

DEIR Recirculation Unnecessary

As previously stated, the Draft EIR was circulated for public review for 45 days consistent with CEQA Guidelines Section 15132, starting on March 10, 2022 and ending on April 25, 2022.

A First Amendment to the DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the DEIR.

A total of eight comment letters were received. Staff responded to the comments and questions in the First Amendment and none of the comments raised new

significant information that would warrant recirculation of the Draft EIR pursuant to CEQA Guidelines Section 15088.5(a). The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not "significant" unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

Final EIR

The First Amendment was posted on the City's website on June 22, 2022 and all commenters were notified via email of the document's availability. The Draft Environmental Impact Report (DEIR) and First Amendment are available for public review on the City's website: <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs>.

The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the project.

Statement of Overriding Considerations

The City Council made a Statement of Overriding Considerations to address the significant and unavoidable transportation impact related to project vehicle miles traveled (VMT) identified in the DEIR, and determined the following project benefits outweigh the impact:

- Addition of 328 housing units including 89 affordable housing units which would contribute to the City's need to provide affordable housing units at all AMI levels close to transit;
- Up to 13,590 square feet of job-producing commercial space which would contribute to a vibrant transit plaza and amenities to the transit riders and immediate neighbors;
- Expansion of the City's trail and bike systems by connecting Blossom Hill Road to Martial Cottle Park;
- Improvements to the Blossom Hill Road and Blossom Avenue/CA-87 ramp intersection, including new ADA ramps which would minimize the risks of accidents and injuries to pedestrians and bicyclists by increasing visibility;

- Improvements to the Blossom Hill Road and Indian Avenue/project entry intersection, including new ADA ramps which would minimize the risks of accidents and injuries to pedestrians and bicyclists by increasing visibility;
- Improvements to Blossom Hill Road along the project frontage, including 15-foot wide sidewalk, Class IV bike lane, and a VTA bus stop, which would minimize the risks of accidents and injuries to pedestrians and bicyclists by increasing visibility; and
- Approximately 0.98 acre of on-site open space which capture precipitation and improves drainage, and provides a recreation space for residents.

9. Permit Findings.

Special Use Permit Findings. To make the Special Use Permit findings pursuant to San José Municipal Code Section 20.100.820 and recommend approval to the City Council, Planning Commission must determine that:

- a. The special use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and

Analysis: As analyzed above, the mixed-use affordable housing project includes 13,590 square feet of ground floor commercial space, 239 market-rate residential housing units, and 89 affordable housing units. The project is consistent with the Signature Project General Plan Policy IP-5.10 and other General Plan Policies, and therefore the project is consistent with this finding.

- b. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: Mixed use projects are permitted with a Special Use Permit within the CP Commercial Pedestrian Zoning District in an Urban Village Plan Area. The project is required to have 193 vehicle parking spaces and 87 bicycle parking spaces for the commercial and residential uses. The project provides 398 vehicle parking spaces and 307 bicycle parking spaces to fulfill the parking requirements. The project also includes one required on-site loading space. Therefore, the project is consistent with the municipal code development standards.

- c. The special use permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals. The on-site sign has been posted at the site since May 1, 2020 to inform the neighborhood of the project. A community meeting was held to discuss the project on October 13, 2020 via

Zoom webinar. Approximately 27 members of the public were in attendance for the meeting. Comments received during the community meeting and project review are discussed below. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public. As discussed above, the project is also consistent with City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design as discussed in the Riparian Corridor Policy Section above.

- d. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare; and

Analysis: The project would not negatively affect the utility or value of surrounding properties in the neighborhood, as the project would replace a vacant surface parking lot with a new mixed-use project near a transit station. The surrounding uses include single-family residential and commercial uses. The project includes multifamily residential and ground floor commercial uses, which are compatible with the surrounding uses. Outdoor activities are primarily oriented to the creek and public trail, to the VTA station entrance, and to the interior of the site to reduce any negative impacts such as noise and glare. The distance from the multifamily affordable building to the adjacent single-family homes is approximately 150 feet to the west. This distance includes a rear yard privacy wall on the single-family homes, the width of Canoas Creek, and the width of the building's common open space to the rear of the building, facing Canoas Creek. This open space includes trees and landscaping which also buffer the project from neighboring uses.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: As identified above, File No. T20-012 was submitted to the City for a Vesting Tentative Map to subdivide two parcels into five parcels. The Special Use Permit would authorize the development of a six-story mixed use building with 13,590 square feet of commercial space and 239 market-rate multi-family residential units and one five-story multifamily residential building with 89

affordable housing units, with improvements to the Canoas Creek trail on approximately 5.39-gross acres of the 7.42-gross acre site. The subject site is physically suitable for the project because all project components are designed within the project site, and the trail improvements provide an amenity to the residents and community members.

The site is bordered by State Route 85 (SR 85), a six-lane divided freeway, to the north and a freeway exit ramp to the east. The Blossom Hill VTA Station is also located to the north of the site, and the VTA light rail runs down the center of SR 85 with access to the Blossom Hill Station provided at the project site. Located south of the project site is Blossom Hill Road, a six-lane street divided by a median. Directly across Blossom Hill Road from the project site are medical office uses. To the west is the Canoas Creek riparian area, and on the other side of the creek are one- and two-story single-family residences and a small commercial building with Lucy's Mexican Grill and VIP Barber Lounge facing Blossom Hill Road.

- f. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improve necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - ii. By other public or private service facilities as are required.

Analysis: The subject site is well-served by Blossom Hill Road, a six-lane road. The existing streets and utilities are of sufficient capacity to serve the project. All public utilities are adequate as evidenced by the issuance of the Final Public Works Memo dated April 15, 2022. The project is required to widen the public sidewalks to include street trees within the public right-of-way, install a bike lane, and improve the intersections along the project frontage including signal modifications, ADA ramps, and crosswalks.

As identified above, the project is located directly adjacent to the Blossom Hill VTA light rail station. Additionally, bus route 27 runs along Blossom Hill Road, providing local bus services to Winchester Station, Kaiser San José, and Downtown Los Gatos.

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The project incorporates measures to address noise, stormwater runoff, drainage and erosion. The project would implement site design measures, such

as creating new pervious areas, adding landscaping around walkways, sidewalks, and parking spaces, and source control measures such as use of efficient irrigation systems, covered trash and recycling containers, and providing an interior parking area. Outdoor activities are primarily oriented to the creek and public trail, to the VTA station entrance, and to the interior of the site to mitigate any negative impacts such as noise and glare. Construction noise and any resulting air quality issues will be short-term and temporary in nature. The project has requested extended construction hours to include Saturday from 8:00 a.m. to 5:00 p.m. to reduce noisier activities first thing in the morning. Extended construction hours shorten the overall construction period and construction-related standard conditions and mitigation measures still apply to limit noise and dust.

Site Development Permit Findings. To make the Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, the City Council must determine that:

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.

Analysis: The project is consistent with this finding, as analyzed for Special Use Permit finding 1.

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project.

Analysis: The project is consistent with this finding, as analyzed for Special Use Permit finding 2.

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is consistent with this finding, as analyzed for Special Use Permit finding 3.

- d. The interrelationship between the orientation, location, and elevation of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: As described above, the subject project includes the construction of two buildings, a six-story mixed use building with 13,590 square feet of commercial space and 239 market-rate multi-family residential units and a five-story multifamily residential building with 89 affordable housing units. The project design includes Mediterranean-style architecture with limestone, cast stone, and smooth-finish stucco materials and variations on color, materials, projections, and recessions,

which contribute to an interesting and varied design. The façades of the affordable multifamily building also include decorative mosaic tiles, and the roof materials of both buildings is Spanish tile. The orientation and location of the two buildings are well designed and compatible on the site, with both buildings sited close to the public right-of-way to achieve an urban aesthetic.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: As described above, the project fronts Blossom Hill Road, a General Plan-designated Main Street which serves as an east-west connector. The existing neighborhood is a mix of residential and commercial uses. The architecture and material of the buildings are Mediterranean style and variation in colors and materials provide an articulated design and helps break up the façade massing. The distance from the multifamily affordable building to the adjacent single-family homes is approximately 150 feet to the west. This distance includes a rear yard privacy wall on the single-family home site, the width of Canoas Creek, and the width of the building's common open space to the rear of the building, facing Canoas Creek. This open space includes trees and landscaping which also buffer the project from neighboring uses.

- f. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The project is consistent with this finding, as analyzed for Special Use Permit finding 7.

- g. Landscaping, irrigation systems, walls, and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: The landscaping, irrigation systems, all walls and fences, utility, and trash facilities will improve the project site and enhance the appearance of the neighborhood. The mechanical equipment will be placed behind screening on the rooftop. Additionally, the transparent glazing at the pedestrian level will enhance the public street by providing activity and adding a vibrant feeling to the neighborhood.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: The project area is regionally and locally accessible. The project site is accessible to vehicles, bicyclists, and pedestrians by a driveway off Blossom Hill Road. There is an additional entry for pedestrians and bicyclists at the intersection

with the Caltrans offramp, also used as emergency access for fire vehicles. There are 193 vehicle parking spaces and 87 bicycle parking spaces required for the commercial and residential uses. The project includes 398 vehicle parking spaces and 307 bicycle parking spaces to fulfill the parking requirements under the provisions of the State Density Bonus Law. Therefore, the amount of parking spaces provided exceeds the requirement. The project is required to widen the public sidewalks to fifteen feet wide along Blossom Hill Road to include street trees within the public right-of-way, install a bike lane, and improve the intersections along the project frontage including signal modifications, ADA ramps, and crosswalks.

Tree Removal Findings. Chapter 13.32 of the San José Municipal Code establishes required findings that must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. The ordinance-size tree removals meet the following required finding:

1. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

Analysis: As identified above, the project includes the removal of 55 ordinance-size trees and 14 non-ordinance trees. To construct the project, the trees will need to be removed and replaced at the City-required ratio. The trees to be removed cannot be preserved, since they are distributed within the developable areas of the site in a manner and density that preclude a viable floor plan.

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
x:x = tree replacement to tree loss ratio				
Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.				
A 38-inch tree equals 12.1 inches in diameter.				
A 24-inch box tree = two 15-gallon trees				

Per the Arborist Report prepared by H.T. Harvey & Associates dated February 19, 2020, the 55 ordinance-size trees to be removed are all of non-native species, including Mexican fan palm, Chinese pistache, and Evergreen pear. These trees are required to be replaced at a ratio of 4:1, calculating to 220 replacement trees.

Of the remaining 14 non-ordinance trees, all are sized between 19 and 38 inches in circumference, and are of the non-native species Red Oak, Holly Oak, and Crape myrtle. These trees will be replaced at a ratio of 2:1, calculating to 28 replacement trees.

Per the table above, 248 replacement trees at 15-gallon size or 124 replacement trees at 24-inch box size are required to be replanted. Pursuant to the project landscaping plan, the development would plant a total of 87 replacement trees at 24-inch box size, 26 replacement trees at 36" box size, and 5 replacement trees at 60" box size, which is equivalent to 277 trees at 15-gallon size, which exceeds the City's Tree Replacement ratios. Therefore, the project is consistent with this requirement.

In accordance with the findings set forth above, a Special Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use permitted hereby.

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the Permittee fail to file a timely and valid appeal of this Special Use Permit and Site Development Permit (collectively referred to herein as "Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
 - a. Acceptance of the Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit.

The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Regulatory Agreement.** Permittees for a density bonus, incentive, waiver or modification of Development Standards, shall enter into a Regulatory Agreement with the City. The subject project includes 89 units restricted for affordable housing (27%), 58 units (18%) are reserved for Extremely Low-Income households, 6 units (2%) are reserved for Very Low-Income households, and 23 units (7%) are reserved for Low-Income households, as defined in California Code Section 65915 The final Regulatory Agreement, as approved by the City Attorney and by the Director of Planning, Building and Code Enforcement, shall be recorded in the Office of the County Recorder prior to the issuance of any Building Permit or Public Works Grading Permit, whichever comes first
5. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of

San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Special Use Permit plans entitled, "Special Use Permit for VTA Blossom Hill Station TOD" dated December 9, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
7. **Use Authorization.** Subject to all conditions herein, this Permit allows the construction and operation of mixed-use project including the construction of one six-story mixed use building with 13,590 square feet of commercial space and 239 market-rate multifamily residential units and one five-story multifamily residential building with 89 affordable housing units, with trail improvements to Canoas Creek, in accordance with the Approved Plan Set.
8. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
9. **Tree Protection Standards.** The Permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning, Building and Code Enforcement. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
10. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
11. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by

the City of San José.

12. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. This Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
13. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
15. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
16. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
17. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
18. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
19. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
20. **Permit Adjustment Required.** Prior to the issuance of any Building Permit, Permittee shall obtain a Permit Adjustment which addresses the following items to the satisfaction of the Director of Planning, Building and Code Enforcement:
 - a. An interpretive sign shall be placed along the trail that reflects the Native American heritage of the Tamien Nation.
 - b. Permittee shall coordinate with the Tamien Nation for the content of the interpretive sign.
 - c. The location and size of the sign shall be coordinated with the Parks, Recreation and Neighborhood Services (PRNS) Department. The installation and maintenance of the sign shall be implemented under an Agreement with the

PRNS Department.

21. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
22. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
23. **Required Vehicular and Bicycle Parking.** This project shall conform to the vehicular and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
24. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
25. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
26. **Construction Hours.** Within 500 feet of residences, construction shall be limited from 7:00 AM to 7:00 PM on weekdays. Extended construction hours are permitted for Saturday work from 8:00 AM to 5:00 PM. Any construction activities occurring outside of these hours is prohibited.
27. **Extended Construction Hours.** Weekend construction hours, including staging of vehicles, equipment and construction materials, shall be limited to Saturdays between the hours of 8 a.m. to 5 p.m. Permitted work activities shall be conducted exclusively within the interior of enclosed building structures provided that such activities are inaudible to existing adjacent residential uses. Permitted work activities include activities such as framing, roofing, siding, stucco, home interior work and landscaping. Concrete work shall be limited to the hours of 9:00 a.m. to 5:00 p.m. Exterior generators, water pumps, compressors, ~~and idling trucks,~~ rough grading, demolition, and roadway construction that include heavy and noisy equipment are not permitted. Permittee shall be responsible for educating all contractors and subcontractors of said construction restrictions. The Director of Planning, Building and Code Enforcement, at their discretion, may rescind provisions to allow extended hours of construction activities on weekends upon written notice to the Permittee.

- 28. Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- 29. Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the "NO DUMPING - FLOWS TO BAY," applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately-maintained streets within the property are present and maintained.
- 30. Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
- 31. Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
- 32. Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
- 33. Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
- 34. Fence Standards.** Fences shall be erected in accordance with the standards established on the Approved Plans. Changes to the approved fencing shall comply with Section 17.24 of the City of San José Municipal Code.
- 35. Privately Owned, Publicly Accessible Open Spaces.** The project's Transit Plaza at the entrance to the transit station and the Canoas Creek Trail will be privately owned, publicly accessible ground level open spaces. These spaces shall be areas designated for use by the general public while owned and maintained by a private owner, as described by the following:
- a. Permittee (including property owners and successors in interest of Permittee or property owner) providing this publicly accessible open space shall, to the fullest extent permitted by law, hold harmless and indemnify the City of San José, its officers, agents and employees, from any and all damage or injury caused in any manner by the design, construction, use, or maintenance of the open space;

- b. Permittee (including property owners and successors in interest of Permittee or property owner) shall be solely liable for any and all damage or loss occasioned by any act or negligence in respect to the design, construction, use, or maintenance of the open space.
- c. Liability Insurance satisfactory to the City's Risk Manager and the City Attorney, naming the City of San José and its officers and employees as additional insureds, shall be provided for all such spaces. The property owner shall record with the County Recorder and provide a copy to the City prior to the issuance of building permits a special restriction on the property satisfactory in substance to the Department and sufficient to give notice to subsequent owners, lien holders, mortgagors, tenants, and others having any economic interests in the property of the open space requirement and the means by which the requirement has been, and must continue to be, satisfied.
- d. Maintenance: Open spaces shall be maintained at no public expense. Permittee (including property owners and successors in interest of Permittee or property owner) for the property on which the open space is located, shall maintain the open space by keeping the area clean and free of litter and keeping in a healthy state any plant material that is provided for the life of the publicly accessible open space and subject project.
- e. Hours of Operation: The privately owned, publicly accessible open spaces shall be publicly accessible 24 hours a day every day. The privately owned, publicly accessible open space may be temporarily closed due to programming, construction, repair, or maintenance. Notwithstanding the foregoing, to the extent authorized by the City of San José in accordance with the City requirements for closure of public space, portions of the privately owned, publicly accessible open space may be set aside for the exclusive use of an adjacent user.
- f. The Permittee (including property owners and successors in interest of Permittee or property owner) shall install and maintain in good condition signage that is clearly readable and visible from the public street or public sidewalk at every entry to the public plaza within 20 feet of the public right-of-way.

36. Green Building Requirements. This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green

building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

37. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at:

<https://www.sanjoseca.gov/your-government/departments/public-works/development-services>.

- a. **Mapping:** Permittee shall dedicate an approximately 17.5-foot wide easement for the purposes of public access of the trail adjacent to Canoas Creek, City maintenance of the trail, and emergency vehicle access within the trail. Final width of the easement shall be determined as required by the Director of Public Works and Director of Parks, Recreation & Neighborhood Services (PRNS) during implementation.
- b. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- c. **Transportation:** A Transportation Analysis has been performed for the subject project based on a net new 102 AM and 139 PM peak hour trips. See separate revised Traffic Memo dated 5/25/22 for additional information. The following conditions shall be implemented:
 - i. Implement the following multimodal physical mitigation measures to reduce the project residential VMT and partially mitigate the VMT impact:
 - a) Pedestrian Network Improvements
 - a) Implement a 0.8-mile Canoas Creek trail extension from the project site to Martial Cottle Park.
 - b) Construct a bicycle/pedestrian shared-use path along the east side of Canoas Creek adjacent to the western boundary of the project site.
 - b) Increase Transit Accessibility: Relocate the existing Route 27 bus stop at the current LRT station location and implement two (2) bus stops with duck-outs and shelters on both travel directions of Blossom Hill Road

- (westbound and eastbound).
- ii. Submit a TDM plan prior to Planning Permit approval for the VMT impact mitigation for the following measures:
 - a) School Carpool Program: Implement a school carpool program with an expected 50% participation rate for families with school-age children.
 - b) Voluntary Travel Behavior Change Program: Provide a travel behavior change program with an expected 50% participation rate for residents.
 - c) On-site TDM Coordinator
 - a) Provide a TDM plan prior to issuance of the Planning permit. Include annual monitoring requirement establishing an average daily trip (ADT) cap of 102 AM peak-hour trips and 139 PM peak hour trips. The annual monitoring report must demonstrate the project is within 10% of the ADT trip cap and must be prepared by a traffic engineer.
 - b) If the project is not in conformance with the trip cap, the Permittee will be required to add additional TDM measures to meet the trip cap. A follow up report will be required within six months. If the project is still out of conformance, penalties will be assessed. See Council Policy 5-1.
 - iii. Pay the VMT Impact Overriding Fee for the proposed 239 market-rate residential units (or approximately 717 residents). The fee is subject to an annual escalation on January 1st in line with the Engineering News-Record Construction Cost Index (ENR CCI). The current 2022 fee is \$2,654 per unmitigated VMT per capita and will need to be multiplied by the unmitigable project VMT of 1.76 VMT per capita (i.e. Delta between the maximum reducible project VMT of 11.88 and the City's residential threshold of 10.12). The VMT Impact Fee will be used to fund and construct the following improvements:
 - a) Canoas Creek Trail Extension
 - b) Blossom Hill Road and Snell Avenue intersection improvements
 - c) Should VMT fees remain after the construction of the Canoas Creek Trail Extension and improvements at Blossom Hill Road and Snell Avenue, the Permittee shall construct or contribute towards intersection improvements at Blossom Hill Road and Cahalan Avenue.
 - iv. Install an all-way stop at the internal four-way intersection.
 - v. Install convex mirrors at the top and bottom of the garage ramps and all blind corners of the parking garage.

- vi. Implement a shared parking agreement between the market rate developer and affordable housing developer prior to issuance of building permits.
 - vii. Install a gate or removable bollards at the EVA driveway to prohibit unauthorized vehicular access.
 - viii. Coordinate with VTA to determine the exact location and design of the two (2) new bus stops along Blossom Hill Road.
 - ix. Submit a shared parking management plan analyzing parking schedules and peak demands for the residential and retail land uses. Confirm with the City's Department of Planning, Building and Code Enforcement to determine how the project can meet its parking requirements with shared parking spaces between the retail and residential land uses.
- d. **Urban Village Plan:** This project is located in the Blossom Hill/Cahalan Avenue Urban Village per the Envision San José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
- e. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San José Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10 year storm event.
 - iii. If the project hauls more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the Permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the

City Project Engineer prior to issuance of a grading permit.

- v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- f. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
 - iv. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
- g. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management area but is not required to comply with the City's Post- Construction Hydromodification Management Policy (Council Policy 8-14).
- h. **Flood Zone A & D:**
 - i. The project site development area is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.

- ii. A portion of the project site (Site B) is adjacent to Canoas Creek which is in Flood Zone A. No structures are permitted to be built within Flood Zone A area.
- i. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- j. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
- k. **Undergrounding:**
 - i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage(s) adjacent to Blossom Hill Road prior to issuance of a Public Works Clearance. 100% percent of the base fee in place at the time of payment will be due. Currently, the 2022 base fee is \$574 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
 - ii. The Director of Public Works may, at his discretion, allow the Permittee to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Blossom Hill Road. Permittee shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
 - iii. The Director of Public Works may, at his further discretion, allow the Permittee to post performance bonds to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Blossom Hill Road in-lieu of submitting copies of executed utility agreements to Public Works prior to issuance of a Public Works Clearance. The posted bonds shall be accompanied with an executed construction agreement between the Permittee and the City of San José. Performance Bonds associated with the undergrounding work shall not be released until all undergrounding work along the project's frontage has been accepted by the Director of Public Works.
- l. **Reimbursement:** The Permittee shall be required to reimburse the City for costs

advanced for the construction of street improvements along Blossom Hill Road in accordance with City Ordinance #19663.

m. Street Improvements:

- i. Construct new 15-foot wide City standard attached sidewalk with 4-foot by 5-foot tree wells behind back of curb along Blossom Hill Road project frontage (west of project entrance).
- ii. Construct the following cross section at the Blossom Hill Road Project frontage per VTA and City of San José standards:
 - a) An 11-foot wide thru lane, 11-foot wide thru lane (within Caltrans right-of-way) which necks down to a 10-foot wide thru lane along the project's frontage, 11-foot wide thru lane, 11-foot wide bus pad, 8-foot wide pedestrian platform, 5-foot wide raised bike lane, 13-foot to 16-foot wide attached City standard sidewalk equals 69 feet from the existing median face-of-curb to the project Right-of-Way (curb line is 45 feet from the existing median face-of-curb, matching the existing dimension along WB Blossom Hill Rd).
 - b) Construct new curb, gutter, and attached City standard sidewalks with 4-foot by 5-foot tree wells behind back of curb.
 - c) Provide approximate 4-foot through 16-foot wide Public Street Easement Dedication as needed to accommodate the new street section.
- iii. Construct (4) four new ADA ramps at the project entrance, along the Blossom Hill Road project frontage.
- iv. Construct a tightened curb radius and construct new ADA ramp at the Blossom Hill Round/CA-85 off-ramp intersection.
- v. Construct an enhanced trail connection along the Blossom Hill project frontage.
- vi. Construct signal modification at the project driveway and Blossom Hill Road intersection to install fourth crosswalk at project driveway and Blossom Hill Road.
- vii. A traffic signal modification may be required at the Blossom Hill Road/SR-85 off-ramp intersection project corner due to the curb line shift needed to accommodate the Class IV protected bikeway, tightened curb radius at the northwest corner including ADA ramp(s) per Caltrans coordination and approval, EVA driveway, and bus stop design on the departure of the intersection.
- viii. Coordinate with Caltrans to obtain an encroachment permit.

- ix. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
 - x. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
 - xi. Remove and replace curb, gutter, and sidewalk along project frontage.
 - xii. Construct curb, gutter, and sidewalk along Blossom Hill Road frontage.
 - xiii. Close unused driveway cut(s).
 - xiv. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - xv. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - xvi. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement shall be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans. To assist the Permittee in better understanding the potential cost implications resulting from these requirements, existing pavement conditions can be evaluated during the Planning permit review stage. The Permittee shall be required to submit a plan and the applicable fees to the Public Works Project Engineer for processing. The plan must show all project frontages and property lines. Evaluation shall require approximately 20 working days.
- n. **Sanitary:**
- i. The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
 - ii. Project may be required to abandon the 6-inch diameter sanitary sewer main along the project frontage per the City specification.
- o. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- p. **Street Trees:**
- i. The recommended street trees for the Blossom Hill Road project frontage is Ulmus Parvifolia 'Emer II,' planted 35 feet on center. Consult the City arborist for alternatives.
 - ii. The locations of the street trees will be determined at the street improvement

stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cutouts at the back of curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.

iii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are to be removed.

q. **Referrals:** This project shall be referred to the California Department of Transportation (Caltrans), Valley Transportation Authority (VTA), and Valley Water (formerly Santa Clara Valley Water District).

38. Building Division Clearance for Issuing Permits. Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. Construction Plans. This permit file number, SP20-012, shall be printed on all construction plans submitted to the Building Division.
- b. San José's Natural Gas Infrastructure Prohibition and Reach Code Ordinances. The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
- c. Americans with Disabilities Act. The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. Emergency Address Card. The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- e. Construction Plan Conformance. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- f. Project Addressing Plan. Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).

g. Other. Such other requirements as may be specified by the Chief Building Official.

39. Bureau of Fire Department Clearance for Issuing Permits. Prior to the issuance of any Building Permit, the project must comply with the 2019 California Fire Code, or as amended and adopted by the City of San José.

40. Housing Conditions of Approval.

- a. The Permittee has submitted an Affordable Housing Compliance Plan Application (Plan) and Processing Fee. Approval of the Plan is required prior to the development's planning application being deemed complete and prior to the Department of Planning, Building and Code Enforcement's first approval.
 - i. The Permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any parcel or final map.
 - ii. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
 - iii. No building permit shall be issued until the Affordable Housing Agreement is recorded against the property. No building permit shall be issued except consistent with the requirements of the IHO and the Development Plan to fulfill the affordable housing obligations.
 - iv. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.
- b. For all Non-Residential development adding or constructing 5,000 square feet or more of new or additional floor area. A Permittee is required to submit to the Housing Department, as part of its the application for First Approval the following: (a) Satisfaction Plan, (b) all attachments to the Satisfaction Plan and (c) the required application processing fee.
- c. Prior to the first to occur of the following: (a) approval of any final map, (b) approval of any parcel map, or (c) issuance of any building permit for a rental residential development, if the subject project has been determined to be subject to the Ordinance, the Inclusionary Housing Agreement must be recorded (senior to all deeds of trust) on the land including all parcels needed to implement the project's residential uses and affordable housing obligation including contiguous property under common ownership and control.
- d. No Final Inspection Approval, Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units will be issued until all

requirements of the Inclusionary Housing Agreement, Inclusionary Housing Ordinance and Guidelines are met.

43. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No._____.

44. **Standard Environmental Conditions.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

a. Air Quality

- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
- ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measures Title 13, Section 2485 of the California Code of Regulations [CCR]). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.

- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Biological Resources

- i. The trees removed by the project would be replaced according to tree replacement ratios required by the City as provided in Table 1, Table 1 below. Of the 69 trees on-site that would be removed, 55 trees would be replaced at a ratio 4:1 ratio and 14 trees would be replaced at a 2:1 ratio. As mentioned previously, there are eight native trees on and adjacent to the project site (including the area of the mixed-use development and trail improvements), however, none of these trees would be removed with the project. The total number of replacement trees required to be planted would be 248 trees. The project would plant a total of 87 replacement trees at 24-inch box size, 26 replacement trees at 36-inch box size, and 5 replacement trees at 60" box size, which is equivalent to 277 trees at 15-gallon size, which exceeds the City's Tree Replacement ratios.

Table 1: Tree Replacement Requirements				
Diameter of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
12.1 inches or more ³	5:1	4:1	3:1	15-gallon container
6.1 – 12.1 inches	3:1	2:1	None	15-gallon container
Less than 6.1 inches	1:1	1:1	None	15-gallon container
¹ As measured 4.5 feet above ground level ² x:x = tree replacement to tree loss ratio ³ Ordinance-sized trees Notes: Trees greater than or equal to 12.1 inches in diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size. A 38-inch tree is 12.1 inches in diameter. One 24-inch box tree = Two 15-gallon trees.				

If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.

- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- ii. **Santa Clara Valley Habitat Plan.** The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

c. Cultural Resources

- i. Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Permittee shall immediately notify the Director of Planning, Building and

Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- a) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - b) The MLD identified fails to make a recommendation; or
 - c) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- iii. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning Building and Code Enforcement (PCBE) or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The Permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of PBCE or the Director's designee.

c. Geology and Soils

- i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- iii. The project site is within the State of California Seismic Hazard Zone of Required Investigation for Liquefaction. A Geotechnical Report shall be

submitted, reviewed, and approved by the City Geologist prior to the issuance of a grading permit. This report should include, but is not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation. The geotechnical investigation report shall be reviewed and approved by the Department of Public Works as part of the building permit review and entitlement process.

- iv. A design level geotechnical corrective plan must be set to be approved for a grading permit, if ground improvements to mitigate settlement, liquefaction, landslides, or other geologic hazards are recommended in the geotechnical report submitted for the project.
- v. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

d. Hydrology and Water Quality

The project would be required to implement the following best management practices to prevent stormwater pollution and minimize potential sedimentation shall be applied to project construction, including but not limited to the following:

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.

- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
 - vi. All paved access roads, parking areas, staging areas, and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
 - viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - ix. The Permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
 - x. A Storm Water Permit will be administered by the State Water Resources Control Board. Prior to construction grading for the project land uses, the project proponent shall file a Notice of Intent to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures shall include, but are not limited to, the aforementioned RWQCB Best Management Practices.
 - xi. The SWPPP shall be posted at the project site and shall be updated to reflect current site conditions.
 - xii. When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction shall be filed with the SWRCB. The NOT shall document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the site.
- e. **Noise.** The Permittee shall implement the following Standard Permit Conditions to minimize the impacts of construction-generated noise.
- i. Prior to the issuance of any building permit, the Permittee shall ensure all outdoor use areas achieve future exterior noise levels at or below the City's "normally acceptable" threshold of 60 dBA DNL at the center of the spaces

where reasonably achievable. For common outdoor use areas where 60 dBA DNL is not reasonably achievable, measures shall be incorporated to achieve reasonable “conditionally acceptable” noise levels at the centers of the outdoor use spaces.

- ii. The Permittee shall retain a qualified acoustical consultant to review the final site plan in order to determine specific noise reduction measures to meet the City’s requirements. Noise reduction measures could include increased setbacks, using the building façades as noise barriers, the construction of traditional noise barriers, or a combination of these methods. The Permittee’s retained qualified acoustical consultant shall prepare a detailed acoustical study during final building design to evaluate the land use compatibility of the common use outdoor spaces with the future noise environment at the site and to identify the necessary noise controls that are included in the design to meet the City’s requirements. The study shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee prior to issuance of any building permit.
- iii. The Permittee shall prepare final design plans that incorporate building design and acoustical treatments with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce ambient interior noise levels to 45 dBA DNL or lower and to achieve the instantaneous noise objective of 50 dBA Lmax in bedrooms and 55 dBA Lmax in other rooms within the residential unit. The Permittee shall conform with any special building construction techniques requested by the City’s Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.
- iv. Fenced Dog Walk: Construct a noise barrier or specially designed fence along the perimeter of the dog walk area. The barrier will be located around the perimeter of the dog walk, attaching to Building A at both ends. The barrier shall be continuous from grade to top, with no cracks or gaps, and be constructed from materials having a minimum surface density of 3 lbs/square foot (e.g., one-inch nominal thickness wood fence boards, ½-inch laminated glass, masonry block, or concrete masonry units (CMU)). Installation of an eight-foot barrier would reduce future exterior noise levels to 65 dBA DNL which would be within the City’s conditionally acceptable range for outdoor residential uses.
- v. Neighborhood Amenity Space (Building A): With partial shielding from the building, this use area would have an ambient noise level 65 dBA DNL. This

is within the City's conditionally acceptable range and no additional noise attenuation is required. If, however, the City would require the outdoor use area to reduce noise levels an acceptable level of 60 dBA DNL, a 10-foot barrier enclosing the space shall be required.

- vi. Building B Amenity Space: With partial shielding from the building, this use area would have an ambient noise level 65 dBA DNL. This is within the City's conditionally acceptable range and no additional noise attenuation is required. If, however, the City would require the outdoor use area to reduce noise levels to an acceptable level of 60 dBA DNL, a six-foot barrier enclosing the space shall be required.
- vii. Deck Area Along the Eastern Façade of Building A: A barrier shall be constructed along the perimeter of the third-floor deck, attaching to the building at both ends. The barrier shall be continuous from grade to top, with no cracks or gaps, and be constructed from materials having a minimum surface density of 3 lbs/square foot. Material to be clear plexiglass or similar, or to be consistent with and complementary to the building color and materials.

To achieve 60 dBA DNL, a barrier height of 10 feet is required due to the direct line-of-sight to SR 85; however, this area is a relatively small space, and a barrier height of 10 feet would affect the aesthetic appeal. With the implementation of a six-foot barrier, noise levels would reduce to below 65 dBA DNL, which is within the range of "conditionally acceptable" noise levels.

- viii. Deck Area Along the Southern Façade of Building A: A six-foot barrier is required that enclosing the area. The barrier would reduce noise levels at this south-facing deck to below 60 dBA DNL.
- ix. Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- x. Preliminary calculations indicate that residential units along the façades of Buildings A and B shall require windows and doors with the minimum STC ratings summarized in Table 5, as well as the incorporation of adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.

45. Revocation, Suspension, Modification. This Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100,

Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Permit was not abated, corrected or rectified within the time specified on the notice of violation;
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby **approved**.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEING THAT PORTION OF THOSE CERTAIN LANDS DESCRIBED IN THE DEED TO JOE THUER AND JOSI THUER IN [BOOK 4747, PAGE 28 OF OFFICIAL RECORDS](#) OF SAID COUNTY, LYING WITHIN A PORTION OF THE RANCHO SANTA TERESA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE STATE OF CALIFORNIA "BHR1-LINE", BEING THE CONSTRUCTION CENTERLINE OF THE STATE OF CALIFORNIA ROUTE 85 BLOSSOM HILL AVENUE RAMP WITH THE STATE OF CALIFORNIA "BHR-LINE", BEING THE CONSTRUCTION CENTERLINE OF THE STATE OF CALIFORNIA ROUTE 85 BLOSSOM HILL ROAD OVER HEAD CROSSING, BOTH AS SHOWN ON THE SANTA CLARA COUNTY TRANSPORTATION AGENCY, GUADALUPE CORRIDOR PROJECT, BLOSSOM HILL PARK AND RIDE RIGHT OF WAY MAP, SHEET 4 OF 25, APPROVED NOVEMBER 21, 1989; THENCE ALONG SAID BHR1-LINE, NORTH 00° 08' 52" WEST 117.95 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 89° 51' 08" WEST 54.00 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT BEING THE BEGINNING POINT OF A NON-TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1743.91 FEET, FROM WHICH THE RADIUS POINT BEARS NORTH 15° 12' 28" WEST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15° 26' 18", AN ARC DISTANCE OF 469.90 FEET; THENCE NORTH 89° 46' 10" WEST 47.60 FEET, THENCE NORTH 69° 46' 10" WEST 26.31 FEET; THENCE NORTH 89° 46' 10" WEST 38.03 FEET TO A POINT IN THE CENTERLINE OF CANOAS CREEK, THAT CERTAIN 75.00 FOOT WIDE DRAINAGE EASEMENT AS SHOWN ON RECORD OF SURVEY FILED IN [BOOK 133 OF MAPS, PAGES 7-25](#), OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE ALONG SAID CENTERLINE, NORTH 09° 23' 23" WEST 781.43 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF STATE ROUTE 85 AS SHOWN ON RECORD OF SURVEY FILED IN [BOOK 732 PAGES 38-51](#), OFFICIAL RECORDS OF SAID SANTA CLARA COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: SOUTH 52° 52' 41" EAST 58.62 FEET; THENCE SOUTH 65° 07' 52" EAST 85.04 FEET; THENCE SOUTH 53° 15' 58" EAST 451.50 FEET; THENCE SOUTH 56° 14' 00" EAST 128.73 FEET TO THE BEGINNING POINT OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 246.00 FEET, FROM WHICH THE RADIUS POINT BEARS SOUTH 33° 46' 00" WEST; THENCE SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 56° 05' 08", AN ARC DISTANCE OF 240.80 FEET; THENCE SOUTH 00° 08' 52" EAST 102.74 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE CALIFORNIA COORDINATE SYSTEM OF 1927, (ZONE 3). THE DISTANCES SHOWN ARE GRID DISTANCES, AND SHOULD BE MULTIPLIED BY 1.0000478 TO OBTAIN GROUND LEVEL DISTANCES. THE INFORMATION SHOWN IS BASED ON A COMBINATION OF RECORD AND MEASURED DATA.

PARCEL TWO:

BEING A PORTION OF THE BLOSSOM HILL ROAD, FORMERLY DOWNER AVENUE, LYING WITHIN A PORTION OF THOSE CERTAIN LANDS DESCRIBED IN THE DEED TO JOE THUER AND JOSI THUER IN [BOOK 4747 PAGE 28 OF OFFICIAL RECORDS](#) OF SAID COUNTY, LYING WITHIN A PORTION OF THE RANCHO SANTA TERESA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

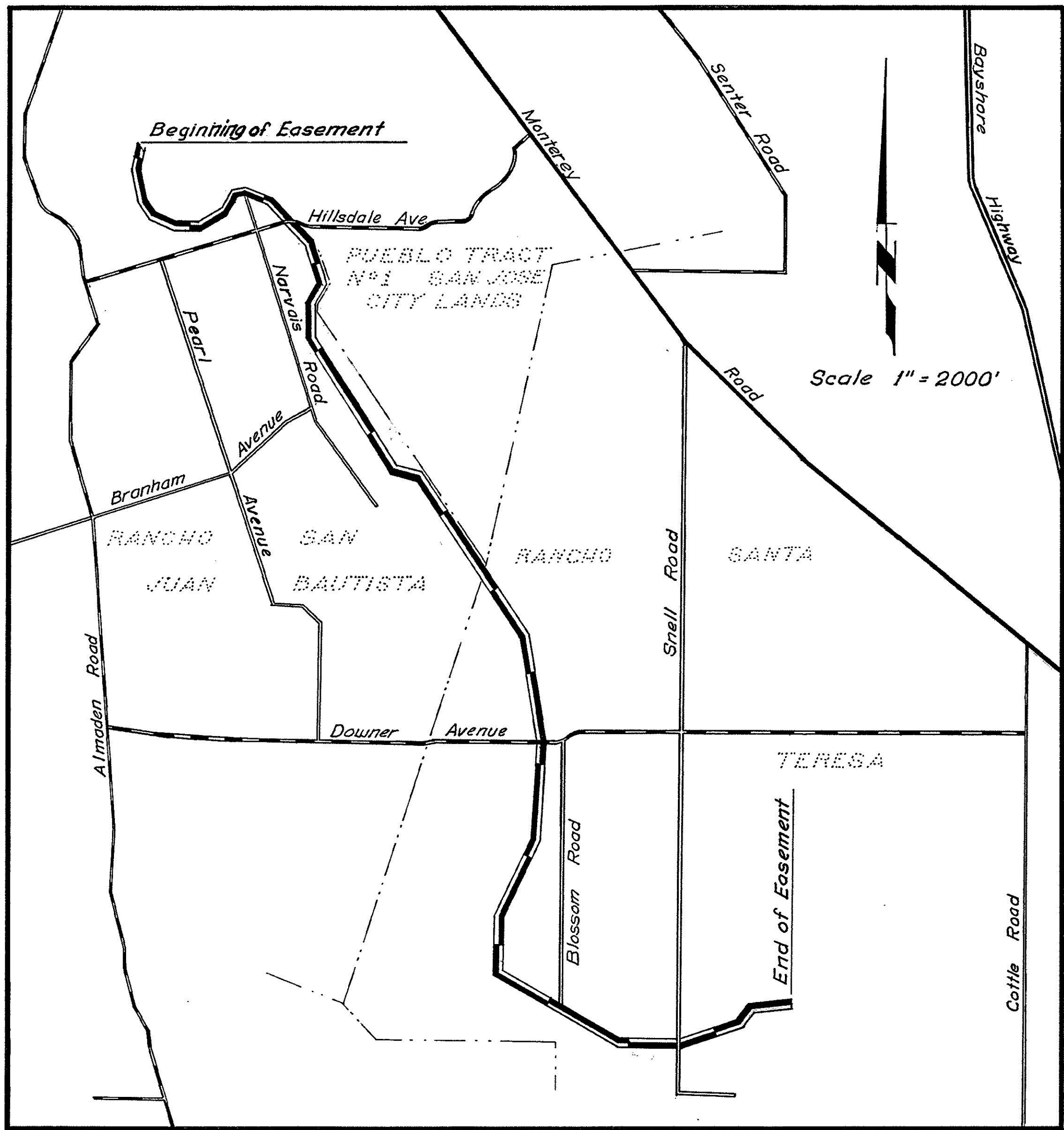
COMMENCING AT THE INTERSECTION OF THE STATE OF CALIFORNIA "BHR1-LINE", BEING THE CONSTRUCTION CENTERLINE OF THE STATE OF CALIFORNIA ROUTE 85 BLOSSOM HILL AVENUE RAMP WITH THE STATE OF CALIFORNIA "BHR-LINE", BEING THE CONSTRUCTION CENTERLINE OF THE STATE OF CALIFORNIA ROUTE 85 BLOSSOM HILL ROAD OVER HEAD CROSSING, BOTH AS SHOWN ON THE SANTA CLARA COUNTY TRANSPORTATION AGENCY, GUADALUPE CORRIDOR PROJECT, BLOSSOM HILL PARK AND RIDE RIGHT OF WAY MAP, SHEET 4 OF 25, APPROVED NOVEMBER 21, 1989; THENCE ALONG SAID BHR1-LINE, NORTH 00° 08' 52" WEST 117.95 FEET; THENCE LEAVING SAID CENTERLINE,

**EXHIBIT A
(Continued)**

SOUTH 89° 51' 08" WEST 54.00 FEET TO THE TRUE POINT OF BEGINNING, THENCE SOUTH 00° 08' 52" EAST 35.82 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 20.00 FEET, FROM WHICH THE RADIUS POINT BEARS SOUTH 89° 51' 08" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00", AN ARC DISTANCE OF 31.42 FEET; THENCE SOUTH 89° 51' 08" WEST 220.70 FEET; THENCE NORTH 86° 08' 37" WEST 50.15 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 1743.91 FEET, FROM WHICH THE RADIUS POINT BEARS NORTH 05° 29' 27" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 09° 43' 01", AN ARC DISTANCE OF 295.76 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE CALIFORNIA COORDINATE SYSTEM OF 1927, (ZONE 3). THE DISTANCES SHOWN ARE GRID DISTANCES, AND SHOULD BE MULTIPLIED BY 1.0000478 TO OBTAIN GROUND LEVEL DISTANCES. THE INFORMATION SHOWN IS BASED ON A COMBINATION OF RECORD AND MEASURED DATA.

APN: [464-22-032](#)



LOCATION MAP

SURVEYOR'S CERTIFICATE

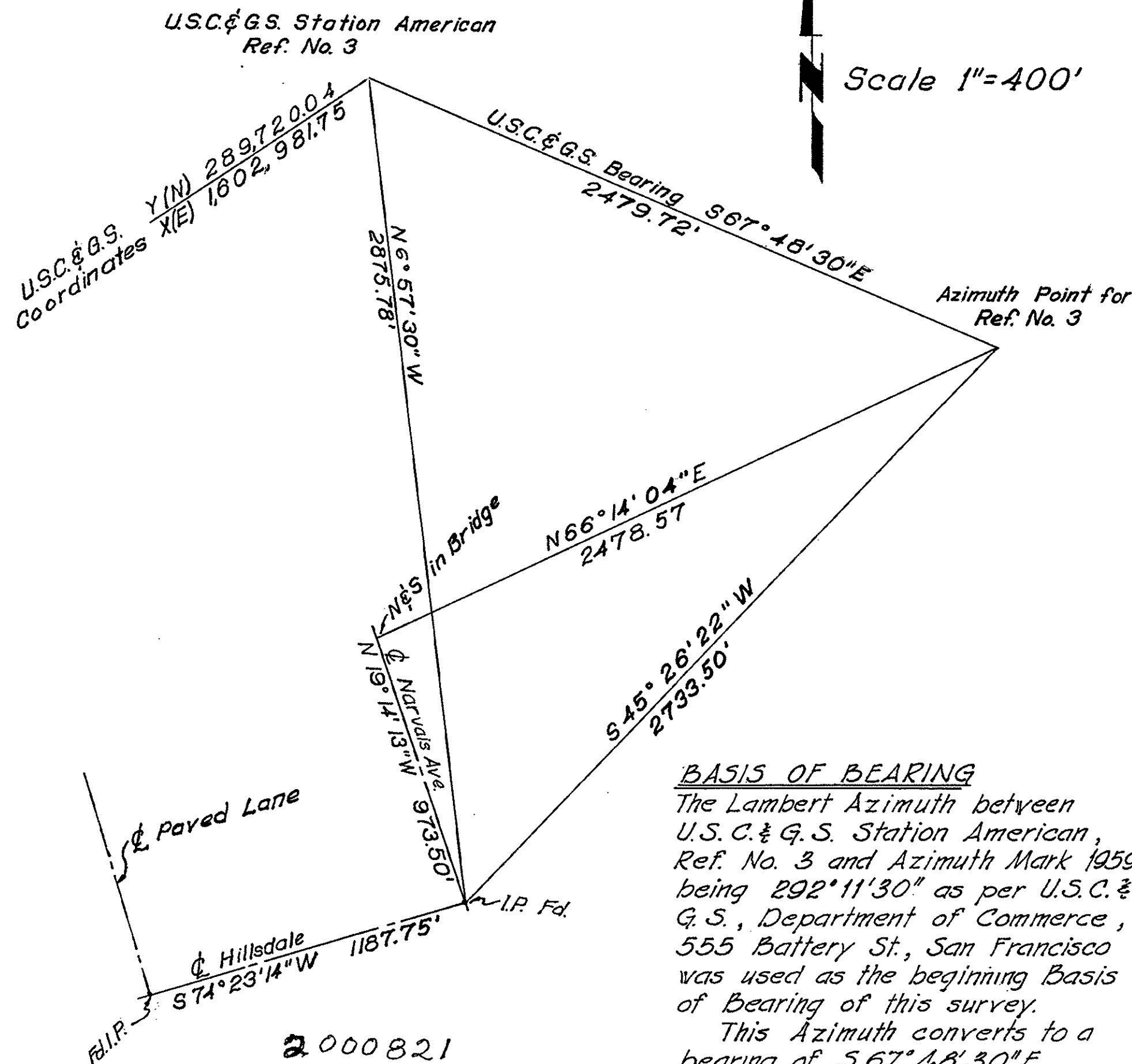
This map correctly represents a survey made under my direction in conformance with the requirements of Chapter 15 of Division 3 of the Business and Professions code at the request of Santa Clara County Flood Control and Water Conservation District in September, 1960.

James T. Pott
County Surveyor, R.C.E. No. 9785

COUNTY SURVEYOR'S CERTIFICATE

This map has been examined for conformance with the requirements of Chapter 15 of Division 3 of the Business and Professions Code this 13th day of May 1961.

James T. Pott, County Surveyor
By Deputy Joseph R. Sweeney



RECORDERS CERTIFICATE

Filed for record this 22nd day of May, 1961 at 9:43 AM. in Book 133 of Maps at pages 7 of the request of Santa Clara County Flood Control and Water Conservation Dist.

Paul R. Teilh, County Recorder

By Deputy E. B. O'Brien

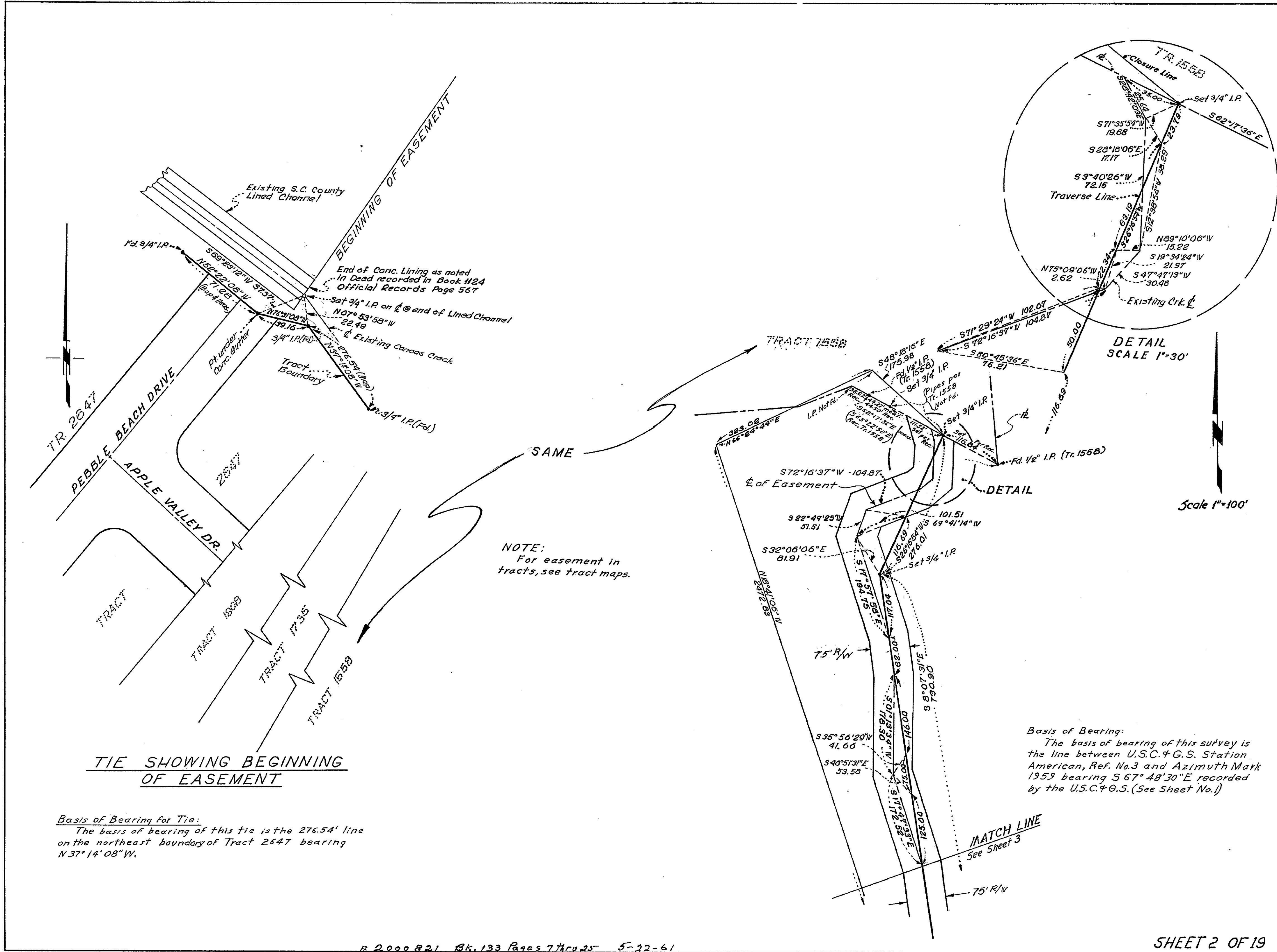
RECORD OF SURVEY

SHOWING THE DRAINAGE EASEMENT OF

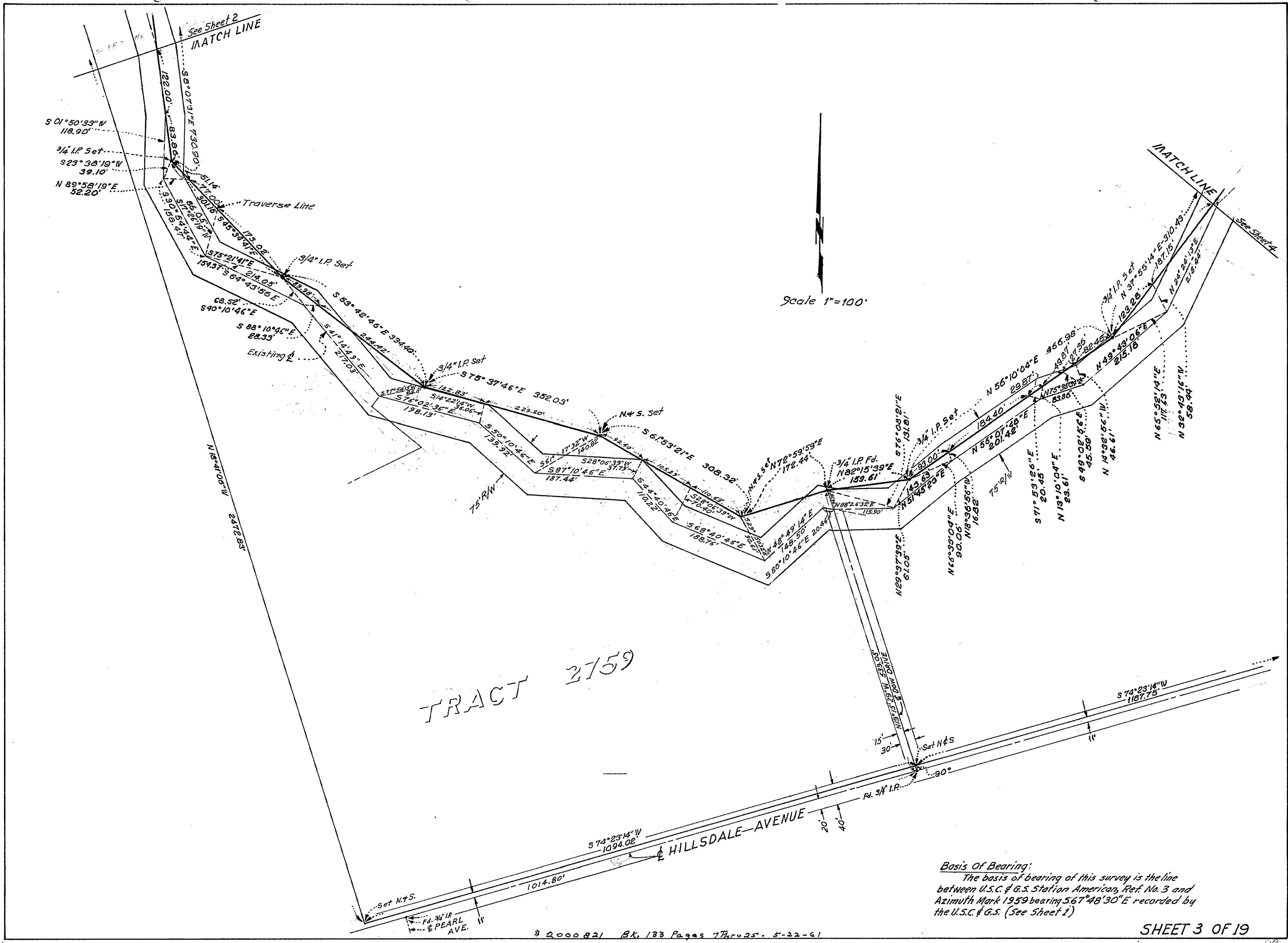
S. C. C. F. C. & W. C. D.

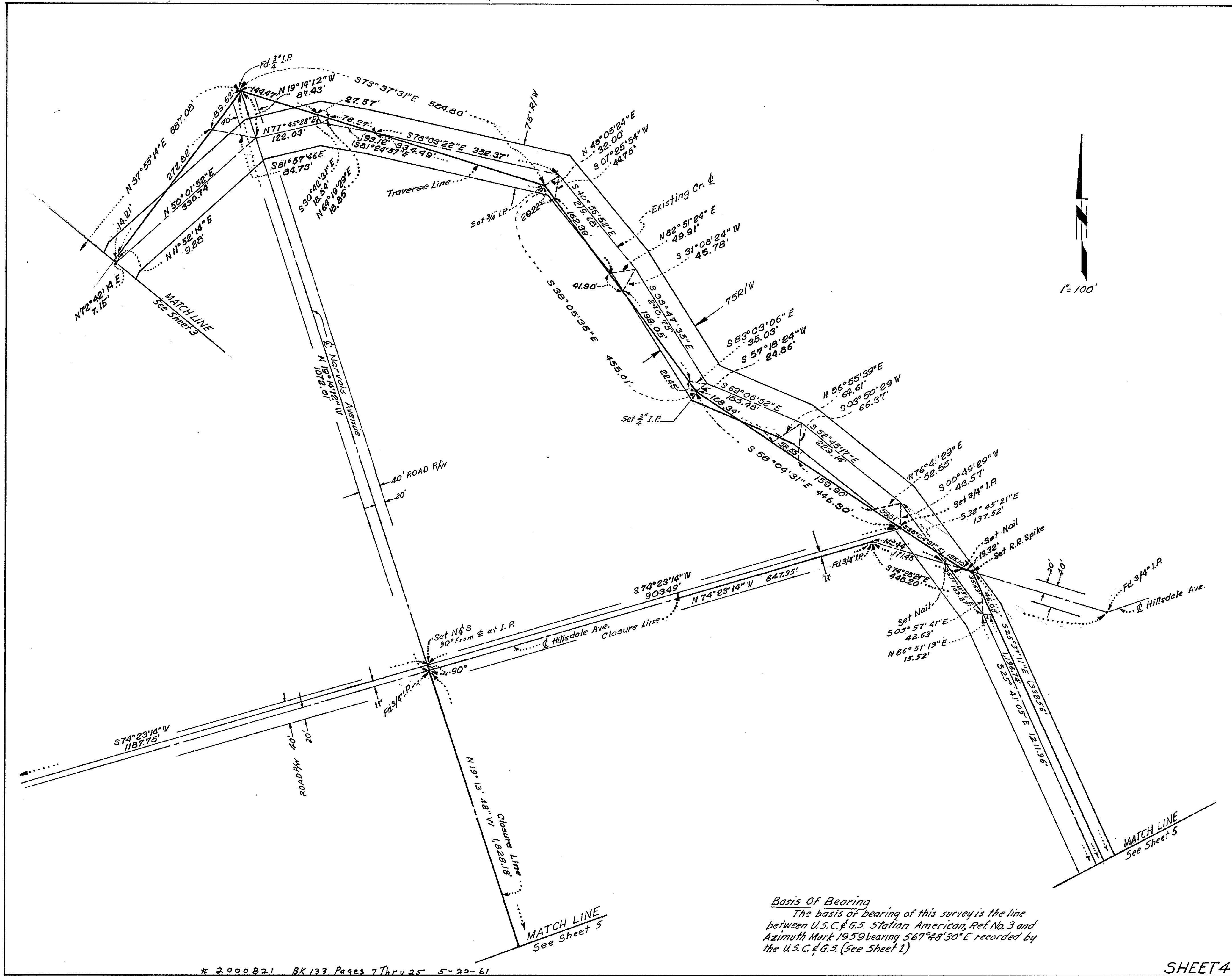
IN THE RANCHO SAN JUAN BAUTISTA
RANCHO SANTA TERESA AND
AND PUEBLO TRACT NO. 1, SAN JOSE CITY LANDS
DESCRIBED IN BOOK 4272 PAGE 639 OF
SANTA CLARA COUNTY OFFICIAL RECORDS
RECORDED ON DECEMBER 29, 1958.

SHEET 1 OF 19



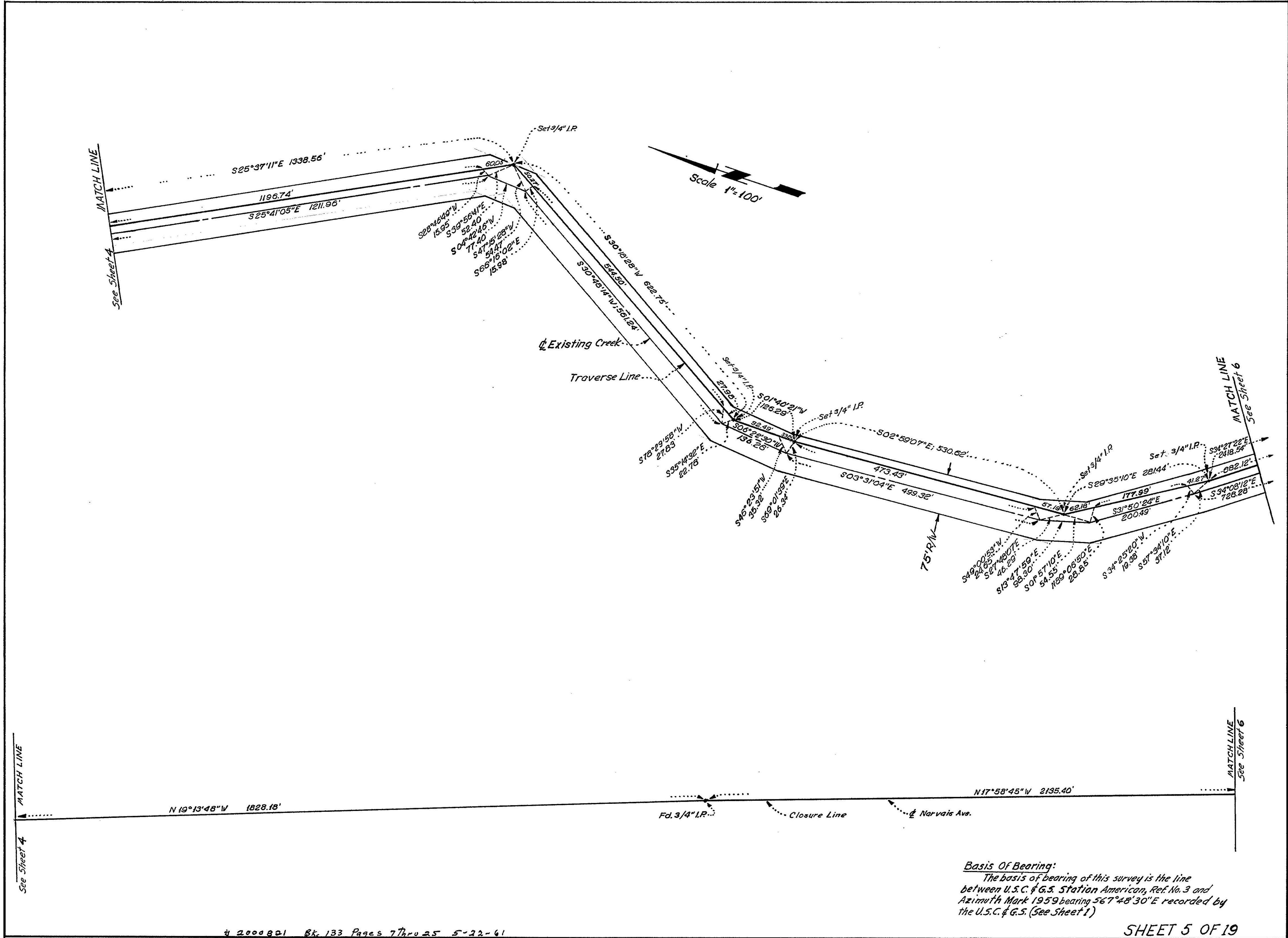
This map/plot is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.



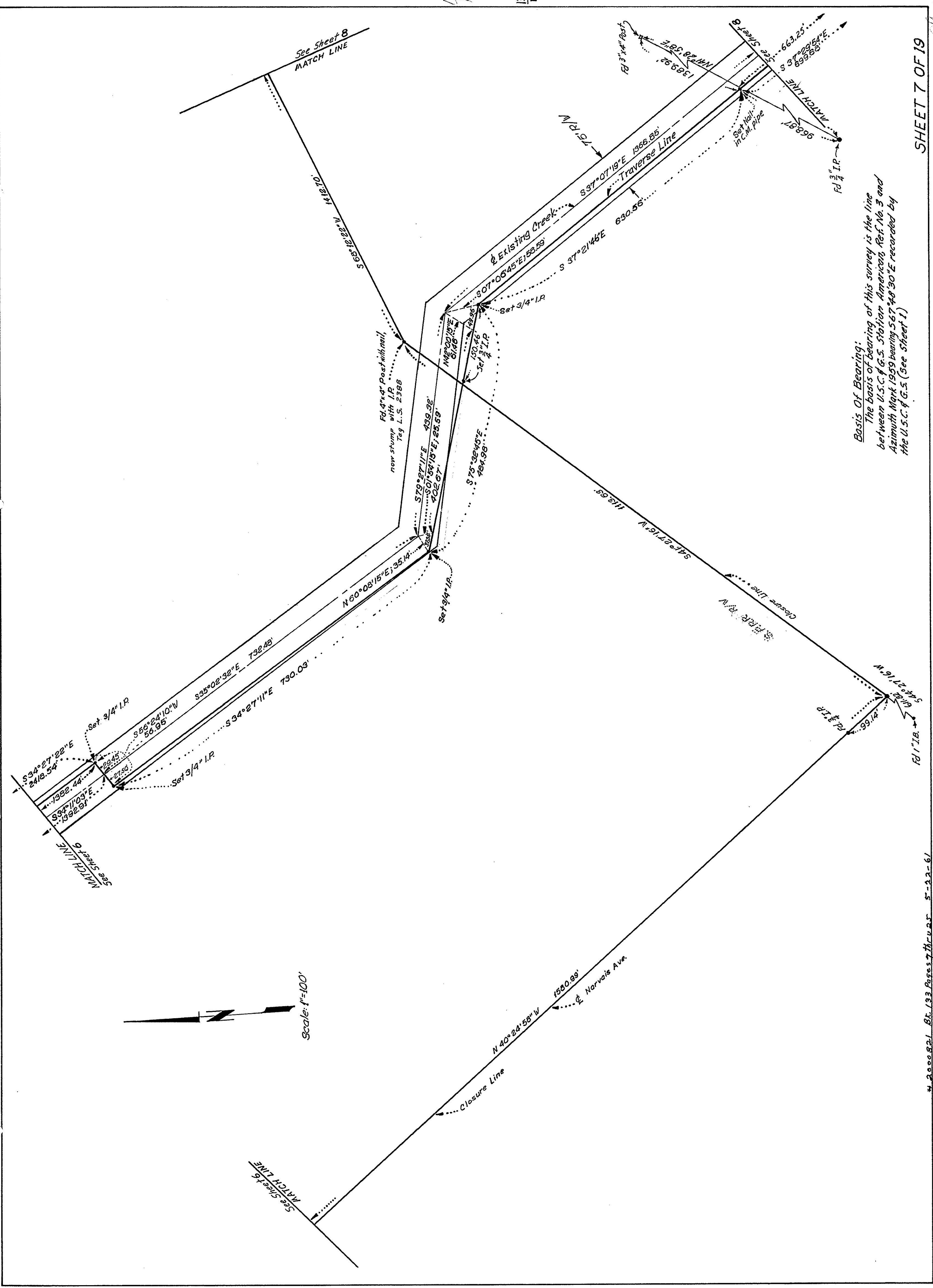


Basis Of Bearing
The basis of bearing of this survey is the line between U.S.C. & G.S. Station American, Ref. No. 3 and Azimuth Mark 1959 bearing 567° 48' 30\"/>

This map/plot is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.



Basis of Bearing:
The basis of bearing of this survey is the line between U.S.C. & G.S. Station American, Ref. No. 3 and Azimuth Mark 1959 bearing 567°48'30"E recorded by the U.S.C. & G.S. (See Sheet 1)

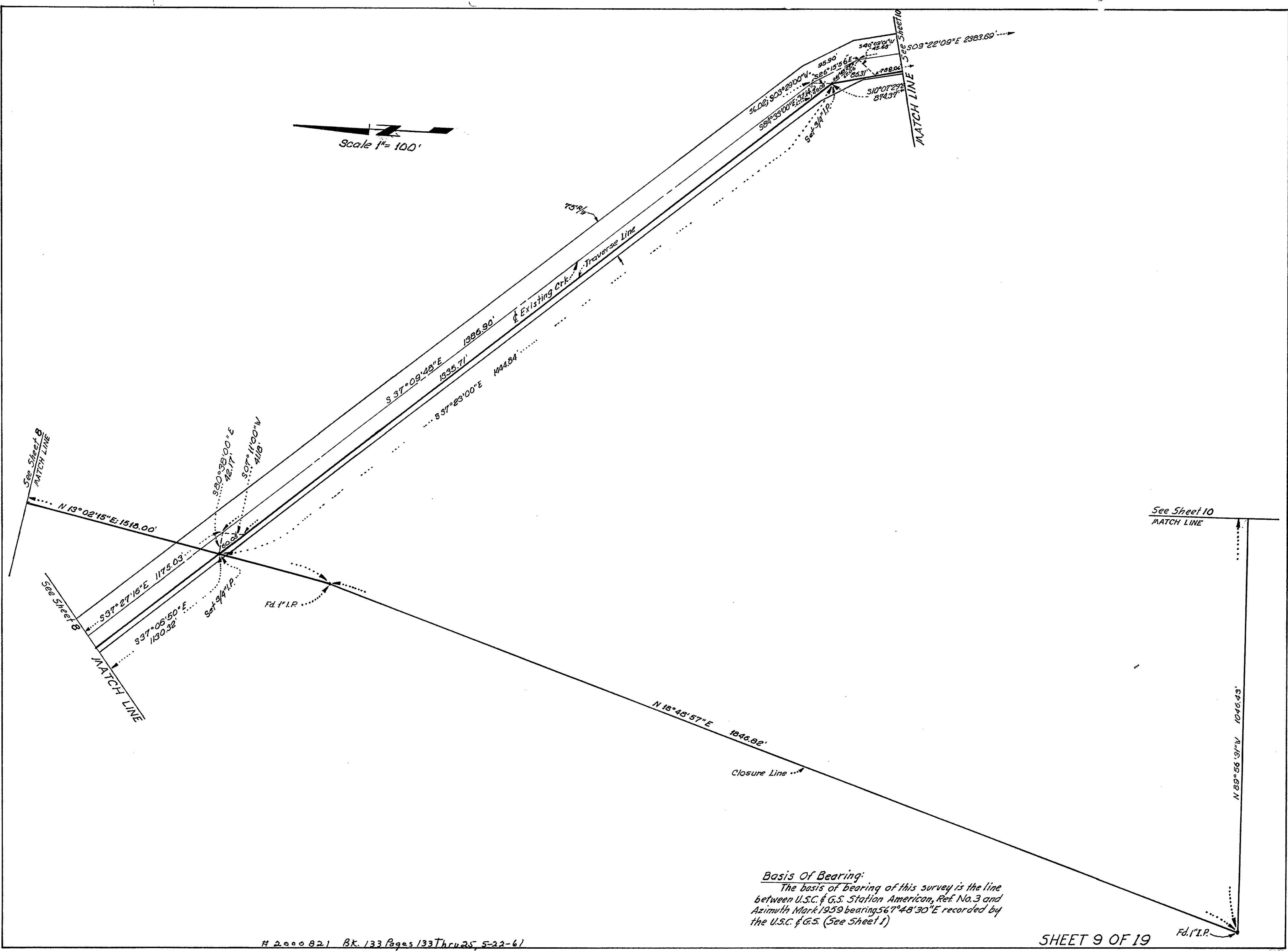


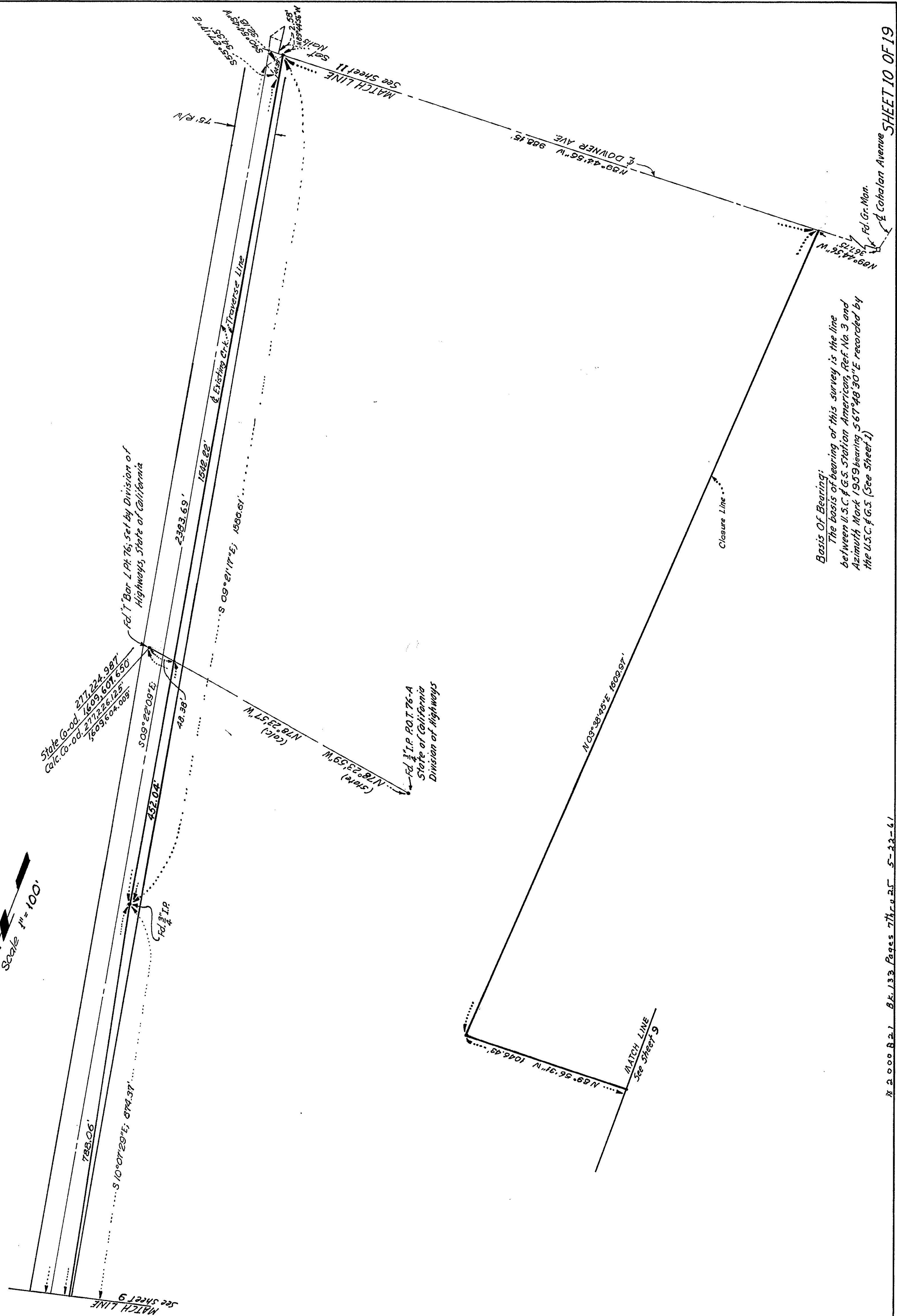
SHEET 7 OF 19

Basis Of Bearing:
The basis of bearing of this survey is the line between U.S.C. & G.S. Station American Ref. No. 3 and Azimuth Mark 1959 bearing S 67° 48' 30" E recorded by the U.S.C. & G.S. (see Sheet 1)

This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

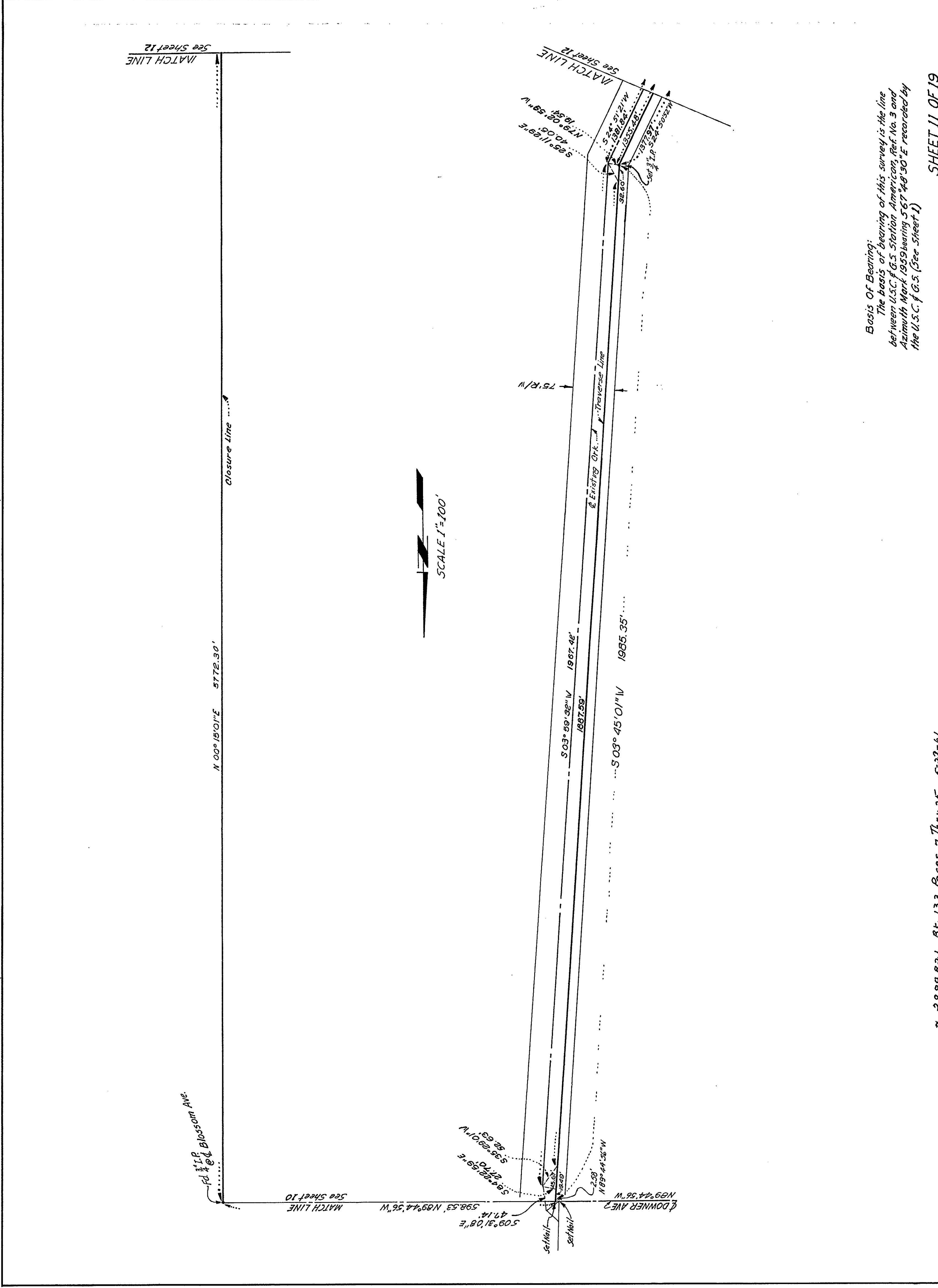
15



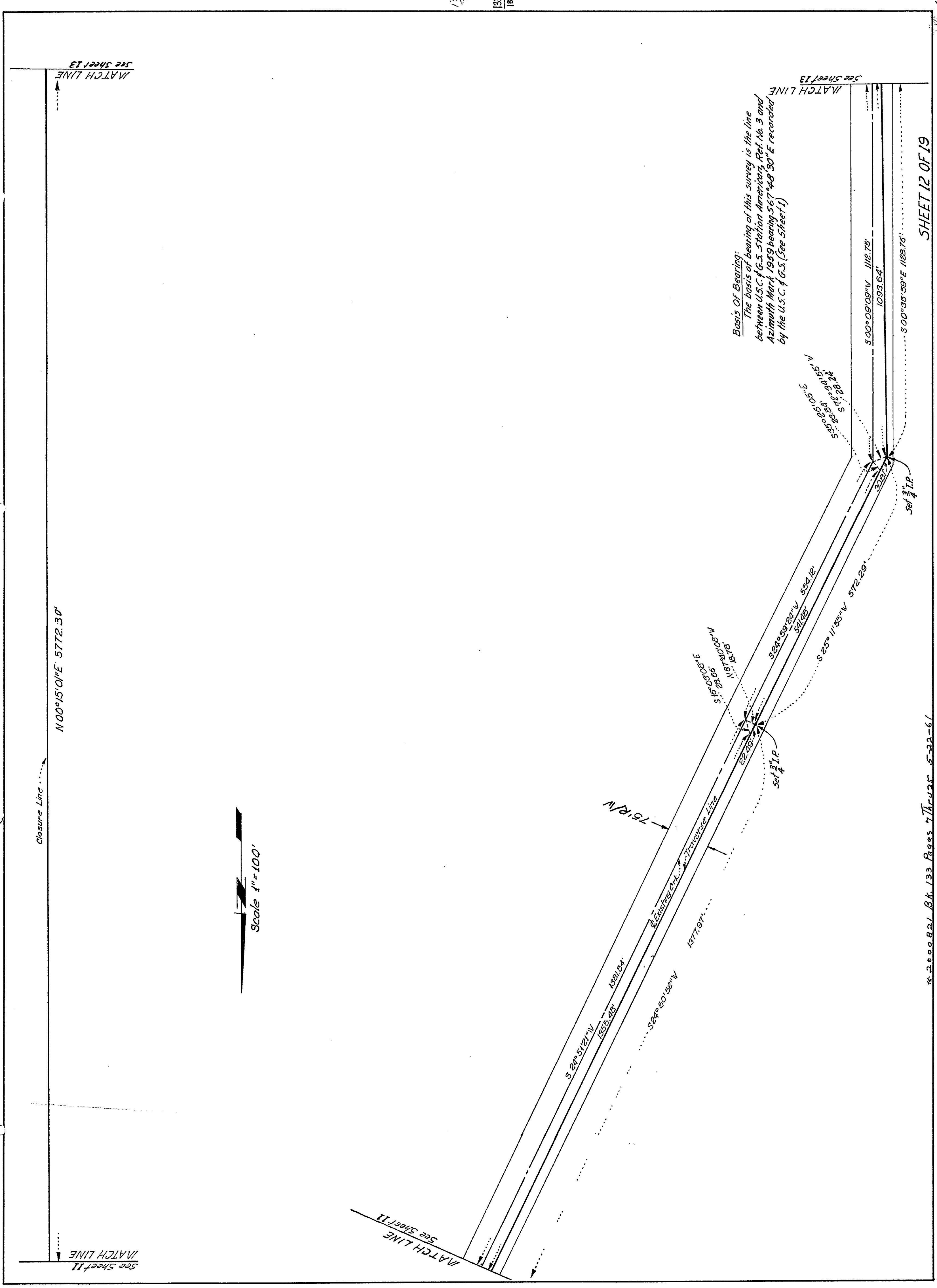


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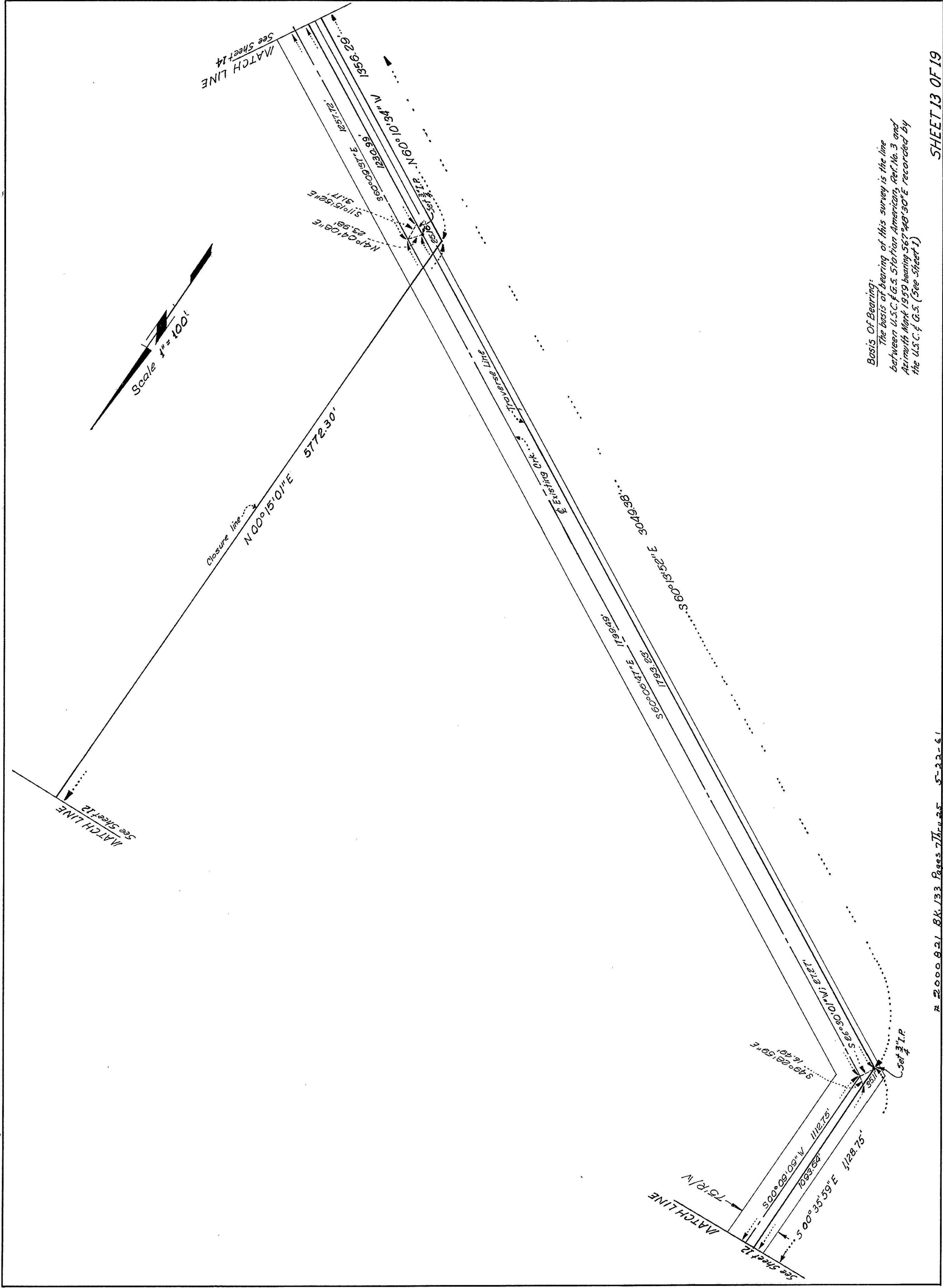
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Basis Of Bearing:
The basis of bearing of this survey is the line
between U.S.C. & G.S. Station American, Ref. No. 3 and
Azimuth Mark 1955 bearing S 67° 48' 30\"/>



This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

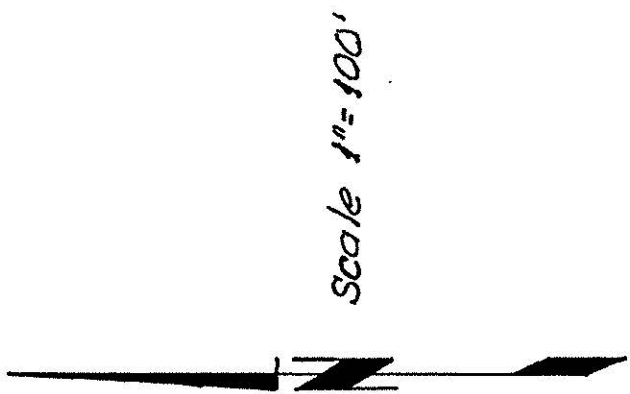


Basis Of Bearing:
The basis of bearing of this survey is the line
between U.S.C. & G.S. Station Americana, Ref. No. 3 and
Azimuth Mark 1959 bearing S 67° 48' 30\"/>

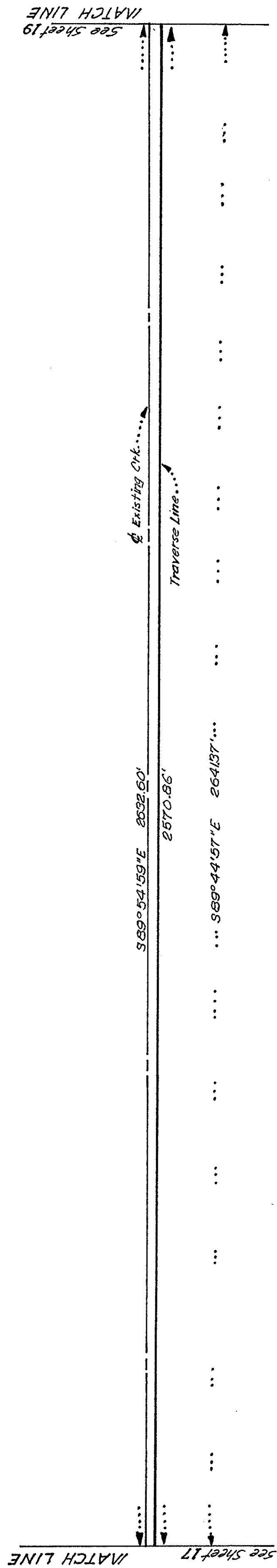
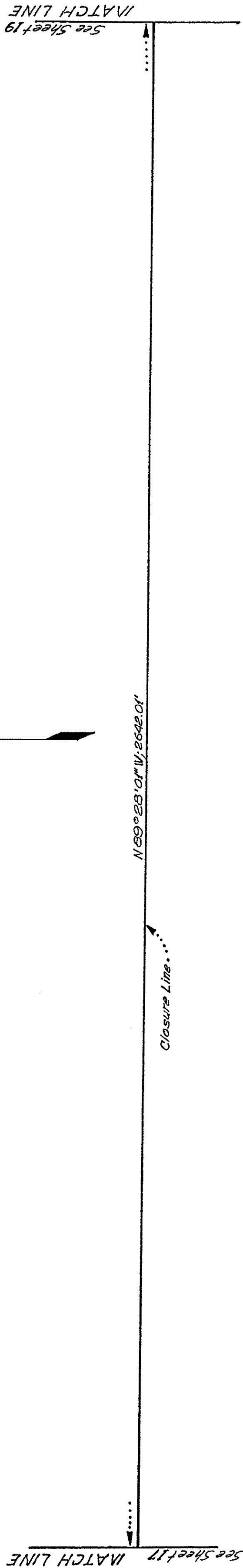
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Scale 1"=100'



Basis Of Bearing:
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