

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**AGREEMENT AND COVENANT RUNNING WITH THE LAND
TO INSTALL AND MAINTAIN MONITORING WELLS
WITHIN THE PUBLIC RIGHT-OF-WAY**

[Restriction on 3511 El Camino Real, Santa Clara, CA]

This Agreement and Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2019 ("Effective Date"), by Lawrence Square Shopping Center LLC ("Owner"), and the City of Santa Clara, California, a chartered California municipal corporation ("City").

RECITALS

- a. WHEREAS, Owner is the sole and exclusive owner of real property commonly known as 3511 El Camino Real in the City of Santa Clara, California, and is shown on the 2018-19 Santa Clara County Property Tax Roll as Assessor's Parcel No. 220-03-010 ("Property").
- b. WHEREAS, City is the owner of Warburton Avenue, ST. Lawrence Drive and Bella Vista Avenue, public rights-of-way.
- c. WHEREAS, Owner wishes to install and maintain monitoring wells within said public rights-of-way.
- d. WHEREFORE, the Parties enter into the following Covenant:

COVENANT

1. Owner proposes to install and maintain and City agrees to permit certain private improvements ("Improvements") in the street right-of-way described and limited to the following:

3 monitoring wells. The locations of the wells are shown on attached Exhibit "A", attached hereto and incorporated herein by this reference.

2. Owner shall maintain, at Owner's expense, Improvements in a safe condition in compliance with City ordinances, rules, regulations, and such terms and conditions as all of the aforesaid are required by City from time to time. City approval of Improvements does not constitute approval on behalf of public utility companies. Approval of public utility companies shall be obtained separately by Owner. If, in the future, Improvements are removed, the area they are removed from shall be left in a safe condition. Removal shall be at Owner's expense and performed under an Encroachment Permit issued by City. Upon removal of Improvements, confirmation by City that the site has been returned to its original or better condition, and payment of applicable processing fee, City shall release Owner's obligations under this agreement by recording a Release of Interest at the County of Santa Clara Recorder's Office.
3. Owner shall permit public utility companies, the City, and their respective officers, employees, and agents to enter upon Property so that there is access to the street right-of-way for the purpose of installation, modification, repair, maintenance, removal or replacement of utility companies and City owned public improvements, facilities or properties situated in the street right-of-way. Owner waives any and all claims for damages or liabilities in connection therewith for property damages incurred as a result of City operations.
4. Owner shall pay City for any damages to City owned facilities caused by the construction or maintenance done by Owner in the street right-of-way. Payment to City shall be made within sixty (60) calendar days of said demand.
5. Owner shall modify, maintain, repair, or remove within sixty (60) days of a written demand of the City Engineer (or designee) at no cost to the City, Improvements (or portion thereof) which prohibits or interferes with the City's ability to maintain, repair, or replace its public facilities located in the street right-of-way. If owner fails to modify, maintain, repair, or remove Improvements (or portion thereof) within the time frame stated in the written demand of City, City shall cause the work to be done and bill Owner for any and all costs, fees, and expenses related to said work. Payment to City shall be made within sixty (60) calendar days of said demand for payment.
6. If Owner fails to pay City for damage to City facilities or for City caused work the Owner failed to perform upon City demand, City may enforce this Covenant in any manner allowed by law including a levy against the Property.
7. Owner shall defend, indemnify and hold harmless the City, its council, officers, employees, agents, successors and assign from any claims, demands, loss, liability, injury, damage, expense or cost (including reasonable attorney's fees) however same may be caused, which may be sustained, incurred, or asserted against City because of and/or arising from this Agreement, including but not limited to claims for design defect and/or dangerous condition of public property. Provided, however, that in no event shall Owner's obligations in this Section apply to any such claims, demands, losses, liabilities, injuries, damages, expenses, or costs to the extent arising out of City's sole negligence or willful misconduct.
8. As used herein, street right-of-way includes not only the roadway traveled by vehicles but the curb and gutter, sidewalk and area between and beyond the sidewalk, if any, to the private property lines or exterior line of right-of-way easements.

9. Each and every covenant made by Owner and/or City in this Covenant is made for the direct benefit of the respective lands described above or the interests in such lands held by the Parties, their heirs, assigns and/or successors in interest, and shall run with said respective lands or interest in lands, and if applicable, the responsibilities and burdens thereof are imposed on and shall run with said respective lands or interest in lands held by the Parties, their heirs, assigns and successors in interest.
10. The lands of Owner which are burdened by this Covenant and which will have the responsibility and burden for the modification, maintenance, repair, or removal of the Improvements is the above mentioned Property.
11. The lands of City which are benefited by the covenants included in this Agreement are Warburton Avenue, St. Lawrence Drive and Bella Vista Avenue, public streets owned by City.
12. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Agreement.
13. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
14. Owner represents and warrants to City that they are the owner(s) of Property at the time of their signature hereto, and have the authority to enter into this Covenant and the covenants contained herein, and grant such interests as are necessary to effectuate this Covenant.
15. Wherever the term "Owner" is used, it shall refer collectively to the Owner(s) signing this Covenant, and/or Owner's assigns and successors in interest. City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party". It is the express intent of the Parties hereto to have the benefits and burdens of this covenant run with the land.

[The last paragraph, Paragraph 16, concerning recordation of this Covenant, and the signature blocks are on page 4]

16. This Covenant shall be recorded by City in the Office of the County Recorder of Santa Clara County.

The Parties acknowledge and accept the terms and conditions of this Covenant as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Covenant shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered municipal corporation

Lawrence Square Shopping Center LLC

DEANNA J. SANTANA
City Manager

By:



1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: 408/615-2210
Fax Number: 408/241-6771

Name:

EDWARD K SELL

Title:

COO & MANAGING DIRECTOR

APPROVED AS TO FORM:

Mailing Address:

EDWARD.SELL@CHANCELLCAPITALPROPERTIES.COM

BRIAN DOYLE
City Attorney

Phone #:

925-362-3502

Fax #:

—

“OWNER” [APN 220-03-010 (2018-19)]

“CITY”

SEE ATTACHMENT
JURAT/ACKNOWLEDGMENT

SL 04/09/2019

ALL LEGAL OWNER(S) OF PROPERTY MUST SIGN THIS DOCUMENT. IF OWNER(S) IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER(S).

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

State of California }

County of Contra Costa }

On April 09, 2019 before me, S. Long, Notary Public
(Here insert name and title of the officer)

personally appeared Edward K. Sell

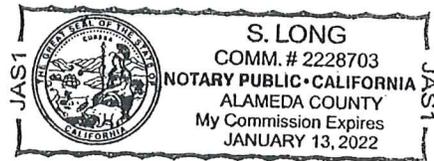
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.

[Signature]
 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
- _____ (Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

Chansell Capital Properties, Inc. f/k/a Norman P. Chan, Inc.

**UNANIMOUS WRITTEN CONSENT OF DIRECTORS
OF**

Chansell Capital Properties, Inc.

IN LIEU OF MEETING OF THE BOARD OF DIRECTORS OF

Chansell Capital Properties, Inc.

A California Corporation

Pursuant to the Authority granted to directors to take action by unanimous consent without a meeting pursuant to the articles of organization of Chansell Capital Properties, Inc. f/k/a Norman P. Chan, Inc. The Board of Directors ("Directors") of Chansell Capital Properties, Inc. a California Corporation (the "Company"), do hereby consent to adopt, ratify, confirm and approve, as of the date indicated below, the following recitals and resolutions, as evidenced by their signature hereunder.

WHEREAS, the Directors have been presented with the proposal to grant signing and authority to conduct business to Edward K. Sell as officer(s) of the company.

WHEREAS, the Directors believe it is the best interest of the corporation to authorize and approve the agreement as set forth herein.

NOW, THEREFORE, BE IT RESOLVED, that it is hereby authorized and approved to grant signing and authority to conduct business to Edward K. Sell as officer(s) of the company.

GENERAL RESOLUTION

Resolved further, that the officers of the corporation are hereby authorized and instructed to take whatever steps necessary to effectuate the above described resolutions.

INWITNESS WHEREOF, The undersigned have set forth their hands in his capacity as of the 15th day of January 2010.

By: Terrence D. Chan

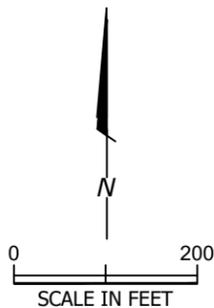
Terrence D. Chan, Owner, CEO and President

By: Edward K. Sell

Edward K. Sell, COO, Managing Director and Secretary

Explanation

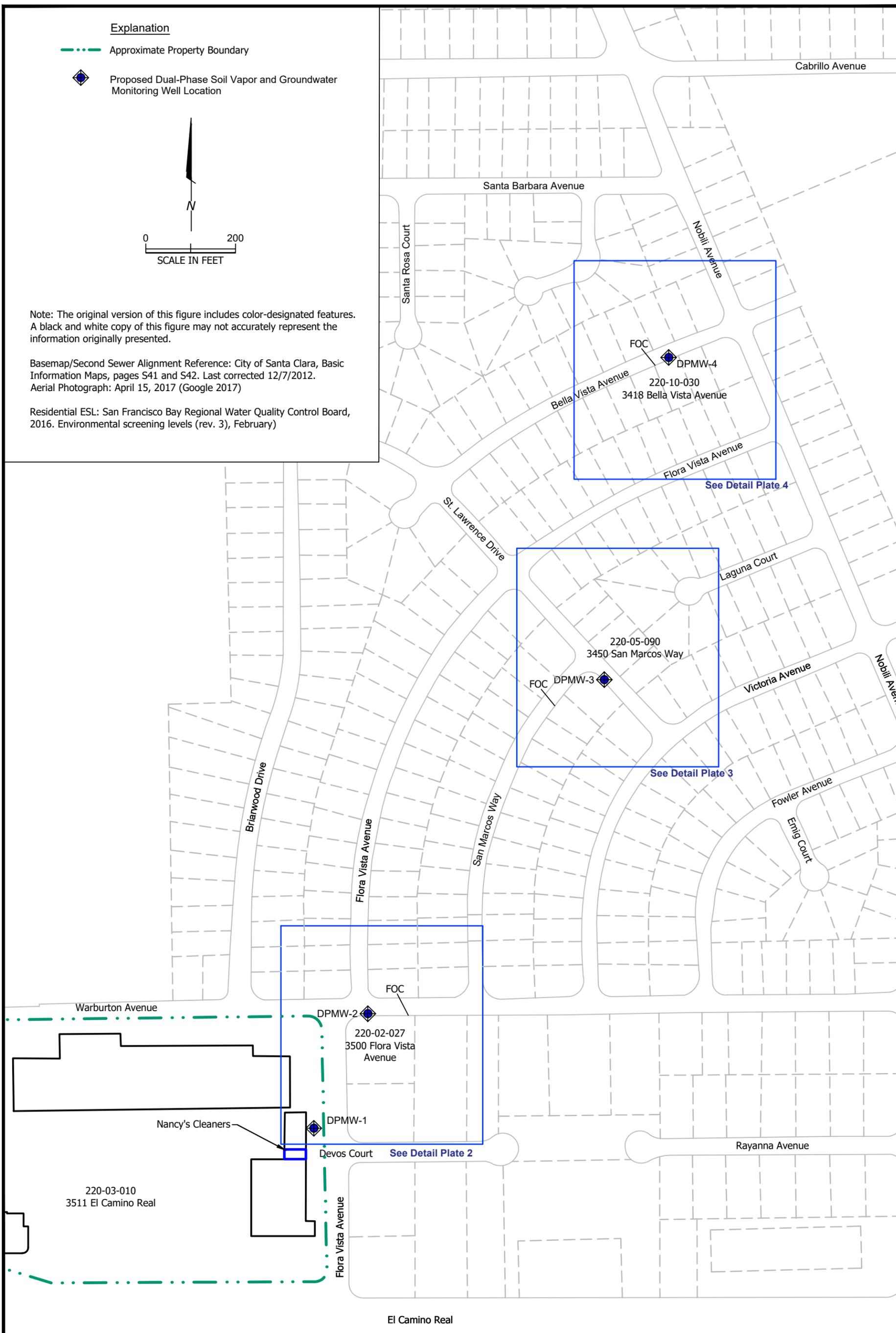
-  Approximate Property Boundary
-  Proposed Dual-Phase Soil Vapor and Groundwater Monitoring Well Location

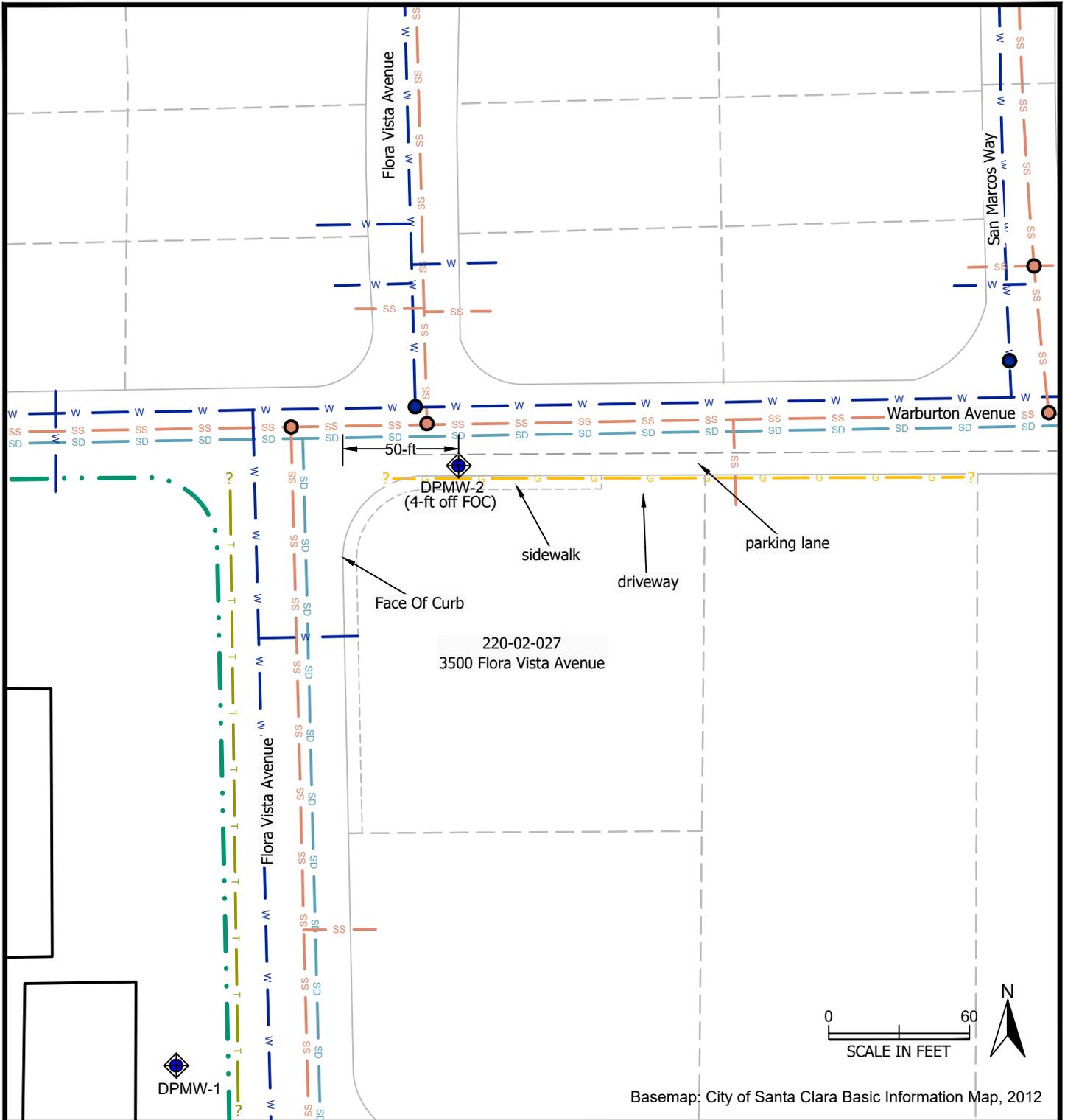


Note: The original version of this figure includes color-designated features. A black and white copy of this figure may not accurately represent the information originally presented.

Basemap/Second Sewer Alignment Reference: City of Santa Clara, Basic Information Maps, pages S41 and S42. Last corrected 12/7/2012.
Aerial Photograph: April 15, 2017 (Google 2017)

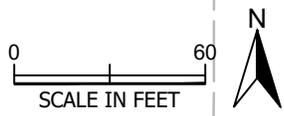
Residential ESL: San Francisco Bay Regional Water Quality Control Board, 2016. Environmental screening levels (rev. 3), February)





DPMW-1

220-02-027
3500 Flora Vista Avenue



Basemap: City of Santa Clara Basic Information Map, 2012

Explanation

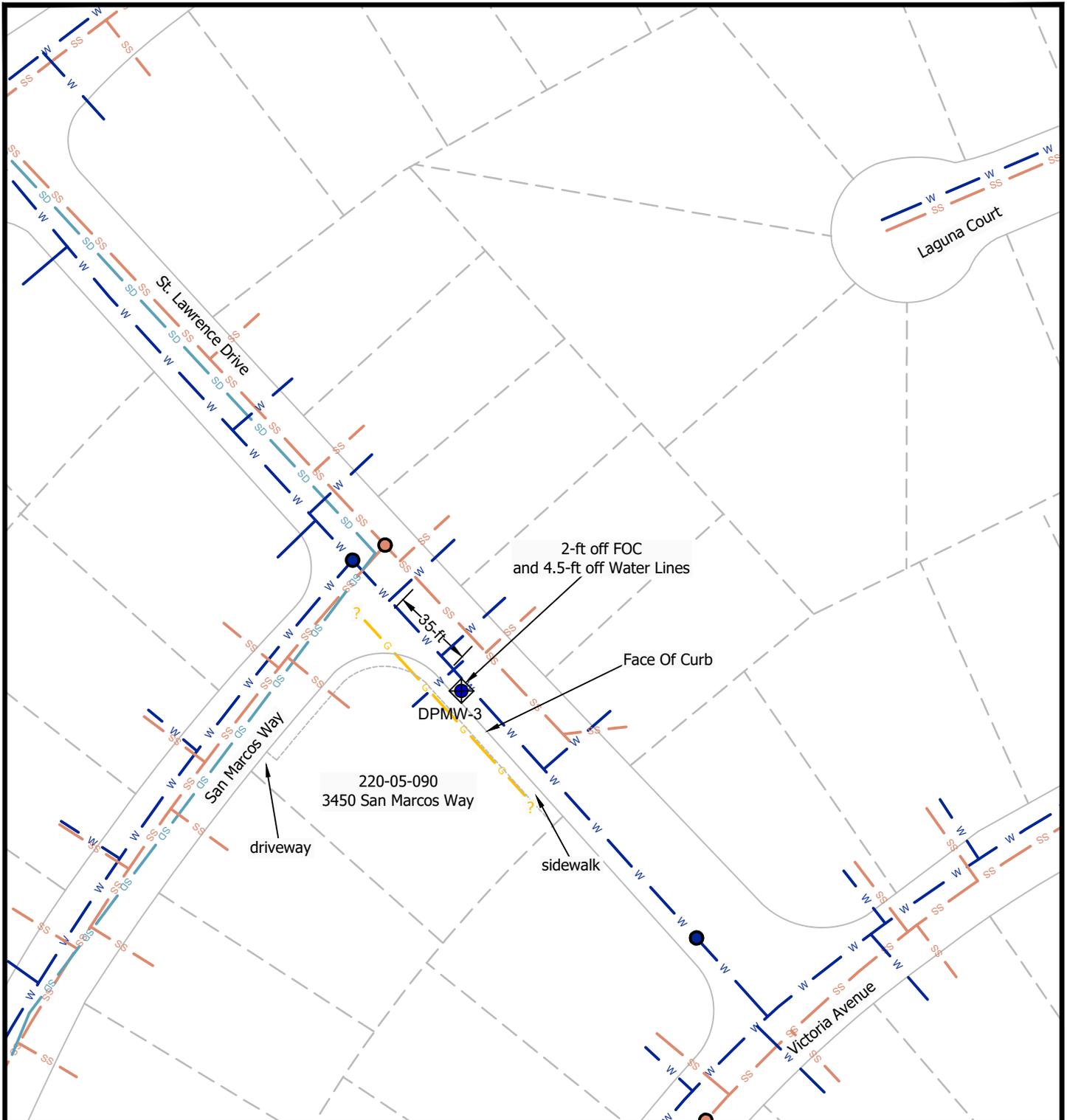
- W — Water Line and Main
- SS — Sanitary Sewer Line and Main
- SD — Storm Drain Line
- G — Gas Line
- T — Telecommunication Line
- ◆ — Proposed Dual-Phase Soil Vapor and Groundwater Monitoring Well Location
- - - — Approximate Property Boundary



EXHIBIT "A"

Proposed Well DPMW-2 Location Map
Lawrence Square Shopping Center
3501-3599 El Camino Real
Santa Clara, California

PLATE
2



Explanation

- W Water Line and Main
- SS Sanitary Sewer Line and Main
- SD Storm Drain Line
- G Gas Line



Proposed Dual-Phase Soil Vapor and Groundwater Monitoring Well Location



Basemap: City of Santa Clara Basic Information Map, 2012



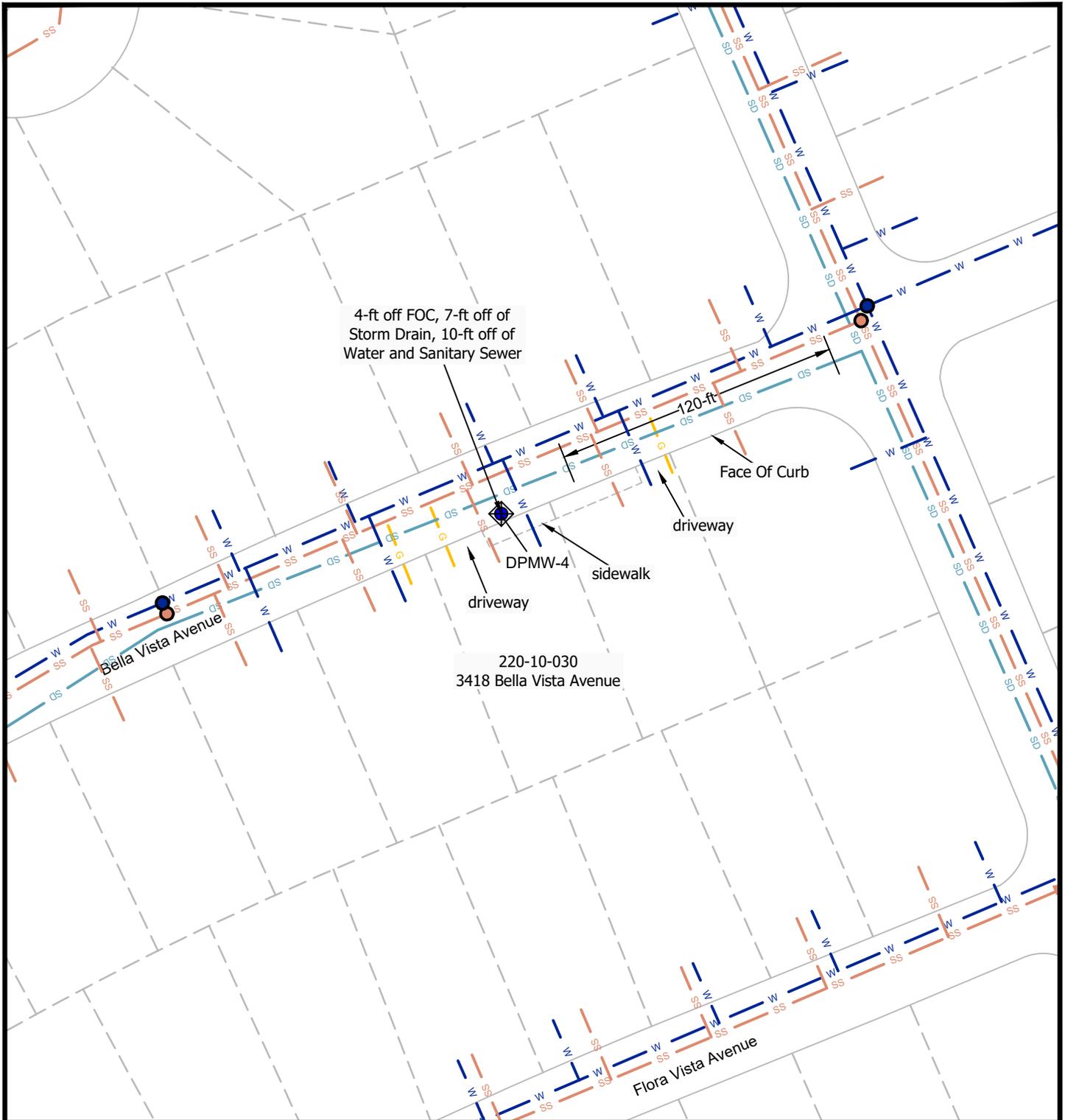
PES Environmental, Inc.
Engineering & Environmental Services

EXHIBIT "A"

Proposed Well DPMW-3 Location Map
Lawrence Square Shopping Center
3501-3599 El Camino Real
Santa Clara, California

PLATE

3



Explanation

- Water Line and Main
- Sanitary Sewer Line and Main
- Storm Drain Line
- Gas Line



Proposed Dual-Phase Soil Vapor and Groundwater Monitoring Well Location



Basemap: City of Santa Clara Basic Information Map, 2012



PES Environmental, Inc.
Engineering & Environmental Services

EXHIBIT "A"

Proposed Well DPMW-4 Location
Lawrence Square Shopping Center
3501-3599 El Camino Real
Santa Clara, California

PLATE

4

Traffic-Rated Utility Vault

3/8-in. diameter Nylaflow Vapor Probe Tubing with compression fitting at top

Locking Expandable Well Plug

Stainless-Steel 50-micron Tip (6.5 ft. bgs)

Cement/Bentonite Sanitary Seal (Approximately 5-ft. thick)

Dry Bentonite Pellet Seal (Approximately 1-ft. thick)

Filter Pack, No. 2/12 Sand (Approximately 1-ft. thick)

Stainless-Steel 50-micron Tip (15 ft. bgs)

Hydrated Bentonite Slurry Seal (Approximately 6-ft. thick)

Dry Bentonite Pellet Seal (Approximately 1-ft. thick)

Filter Pack, No. 2/12 Sand (Approximately 1-ft. thick)

Hydrated Bentonite Slurry Seal (Approximately 4-ft. thick)

2-in. dia. Sch40 PVC Blank

Dry Bentonite Pellet Seal (Approximately 1-ft. thick)

Filter Pack, No. 2/12 Sand

2-in. dia. Sch40 PVC Well Screen (0.010 inch)

Bottom Cap

Boring dia. = 8-in.

Note: Thickness of hydrated bentonite slurry below 15-foot soil vapor sampling zone will be based on site lithology and depth to first water-bearing zone as determined in the field at the time of drilling.

Not to Scale



PES Environmental, Inc.
Engineering & Environmental Services

EXHIBIT "A"

Generalized Construction Detail for Dual-Phase Monitoring Well

Lawrence Square Shopping Center
3501-3599 El Camino Real
Santa Clara, California

PLATE

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