

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
SOUTH COAST REGION 5  
3883 RUFFIN ROAD  
SAN DIEGO, CALIFORNIA 92123



**LAKE AND STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION NO. 1600-2020-0064-R5

BILL H LYON  
P.O. Box 8858  
Newport Beach, CA 92658

Governor's Office of Planning & Research

**Dec 29 2020**

Lyon Subdivision, Vesting Tentative Tract Map (VTTM) #17950  
Coto de Caza  
Orange County, California

**STATE CLEARINGHOUSE**

This Lake and Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Bill H. Lyon (Permittee) as represented by Lexi Kessans.

## **RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on March 16, 2020, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

## **PROJECT LOCATION**

The project site comprises approximately 63.32 acres of the overall William Lyon Estate located in the unincorporated community of Coto de Caza, Orange County, California [Exhibit 1 – Regional Map]. The project site is located within Section 35 of Township 6 South, Range 7 West, of the U.S. Geological Survey (USGS) 7.5" quadrangle map Cañada Gobernadora (dated 1968 and photo revised in 1988) [Exhibit 2 – Vicinity Map]. The project site is bordered by Coto de Caza Drive to the east, open space and residential development to the south, open space to the west, and the remainder of the Lyon Estate to the north.

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## PROJECT DESCRIPTION

The Project will alter two un-named tributaries of Trabuco Creek comprised of live oak riparian forest, elderberry scrub, southern cattail emergent wetland, mulefat scrub, coastal sage scrub, and unvegetated streambed. Streambed alteration will occur as a result of activities to construct: a building pad; culverts, rip-rap and grade control structures; road crossings; water quality basin and remedial grading.

Project activities are limited to those described in the Notification and include grading for building pads, remedial work, roadways, and a water quality basin; as well as creating three road crossings with culverts. One crossing will consist of a 20'4" x 17'9" arched culvert and two crossings will consist of 20'7" x 13'2" arched culverts, all of which will have soft bottoms which will be accomplished by burying the closed pipes four feet below the creek surface. Existing creek elevations will be recontoured in these areas. Rip-rap and grade control structures will be installed as necessary based on hydrological studies as depicted on Exhibit 3 and Exhibit 5.

This work is occurring in association with a larger project: a residential development consisting of a maximum of 25 single-family residential units on lots ranging in size from 2 to 6.1 acres. Development would occur on 40.3 acres of the 63-acre proposed Project site, most of which is citrus orchard, although there are portions of coastal sage scrub and oak tree woodland that would be impacted by the Project.

## PROJECT IMPACTS

Existing fish or wildlife resources the project may affect based on information received from Permittee include: Amphibians: California tree frog (*Pseudacris cadaverina*), Pacific tree frog (*Pseudacris regilla*); Reptiles: southern alligator lizard (*Elgaria multicarinata*), California legless lizard (*Anniella pulchra*), rosy boa (*Charina trivirgata*), common kingsnake (*Lampropeltis getula*), gopher snake (*Pituophis catenifer*), racer (*Coluber constrictor*), coachwhip (*Masticophis flagellum*), California whipsnake or striped racer (*Masticophis lateralis*), western patch-nosed snake (*Salvadora hexalepis*), ring-necked snake (*Diadophis punctatus*), coast horned lizard (*Phrynosoma coronatum*), common side-blotched lizard (*Uta stansburiana*), western skink (*Eumeces skiltonianus*), western rattlesnake (*Crotalus viridis*), red diamond rattlesnake (*Crotalus ruber*) and other reptile species; Birds: California quail (*Callipepla californica*), turkey vulture (*Cathartes aura*), Cooper's hawk (*Accipiter cooperii*), sharp-shinned hawk (*Accipiter striatus*), red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), white-tailed kite (*Elanus leucurus*), American kestrel (*Falco sparverius*), killdeer (*Charadrius vociferous*), rock pigeon (*Columba livia*), mourning dove (*Zenaidura macroura*), greater roadrunner (*Geococcyx californianus*), barn owl (*Tyto alba*), great horned owl (*Bubo virginianus*), western screech owl (*Megascops kennicottii*), white-throated swift (*Aeronautes saxatalis*), cactus wren (*Campylorhynchus brunneicapillus*), Bewick's wren (*Thryomanes bewickii*), house wren (*Troglodytes aedon*), ruby-crowned

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kinglet (*Regulus calendula*), blue-gray gnatcatcher (*Polioptila caerulea*), coastal California gnatcatcher (*Polioptila californica californica*), Swainson's thrush (*Catharus ustulatus*), western bluebird (*Sialia mexicana*), American robin (*Turdus migratorius*), wrenit (*Chamaea fasciata*), northern mockingbird (*Mimus polyglottos*), California thrasher (*Toxostoma redivivum*), European starling (*Sturnus vulgaris*), phainopepla (*Phainopepla nitens*), yellow-rumped warbler (*Setophaga coronata*), black-throated gray warbler (*Setophaga nigrescens*), yellow warbler (*Setophaga petechia*), Townsend's warbler (*Setophaga townsendi*), common yellowthroat (*Geothlypis trichas*), orange-crowned warbler (*Leiothlypis celata*), hooded warbler (*Setophaga citrina*), Wilson's warbler (*Cardellina pusilla*), rufous-crowned sparrow (*Aimophila ruficeps*), grasshopper sparrow (*Ammodramus savannarum*), sage sparrow (*Amphispiza belli*), lark sparrow (*Chondestes grammacus*), song sparrow (*Melospiza melodia*), savannah sparrow (*Passerculus sandwichensis*), California towhee (*Pipilo crissalis*), spotted towhee (*Pipilo maculatus*), golden-crowned sparrow (*Zonotrichia atricapilla*), white-crowned sparrow (*Zonotrichia leucophrys*), lazuli bunting (*Passerina amoena*), blue grosbeak (*Passerina caerulea*), black-headed grosbeak (*Pheucticus melanocephalus*), western tanager (*Piranga ludoviciana*), Brewer's blackbird (*Euphagus cyanocephalus*), Bullock's oriole (*Icterus bullockii*), hooded oriole (*Icterus cucullatus*), western meadowlark (*Sturnella neglecta*), Cassin's finch (*Carpodacus cassinii*), house finch (*Carpodacus mexicanus*), Lawrence's goldfinch (*Spinus lawrencei*), lesser goldfinch (*Spinus psaltria*), American goldfinch (*Spinus tristis*), and other bird species; Mammals: Virginia opossum (*Didelphis virginiana*), pallid bat (*Antrozous pallidus*), western red bat (*Lasiurus blossevillii*), western yellow bat (*Lasiurus xanthinus*), California myotis (*Myotis californicus*), Yuma myotis (*Myotis yumanensis*), western pipistrelle (*Pipistrellus hesperus*), California mastiff bat (*Eumops perotis californicus*), pocketed free-tailed bat (*Nyctinomops femorosaccus*), desert cottontail (*Sylvilagus audubonii*), brush rabbit (*Sylvilagus bachmani*), Botta's pocket gopher (*Thomomys bottae*), house mouse (*Mus musculus*), desert woodrat (*Neotoma lepida*) deer mouse (*Peromyscus maniculatus*), western harvest mouse (*Reithrodontomys megalotis*), western gray squirrel (*Sciurus griseus*), fox squirrel (*Sciurus niger*), California ground squirrel (*Spermophilus beecheyi*), coyote (*Canis latrans*), gray fox (*Urocyon cinereoargenteus*), raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), bobcat (*Lynx rufus*), mountain lion (*Felis concolor*), mule deer (*Odocoileus hemionus*) and other mammal species; Plants: black willow (*Salix gooddingii*) thickets, mulefat (*Baccharis salicifolia*), arroyo willow (*Salix lasiolepis*) thickets, western sycamore (*Platanus racemosa*), coast live oak (*Quercus agrifolia*), bulrush cattail (*Typha latifolia*) marsh, riparian herbaceous vegetation, coastal sage scrub, and all other aquatic and wildlife resources in the area, including the riparian vegetation which provides habitat for such species in the area.

The adverse effects that the project could have on the fish and/or wildlife resources identified above include: loss of natural bed or bank, relocation of stream or channel; change in contour of bed, channel or bank; change in gradient of bed, channel, or bank; soil compaction or other disturbance to soil layer; short-term release of contaminants (e.g. incidental from project activities); loss or decline of riparian habitat; decline of vegetative diversity; colonization by exotic plant or animal species; loss or decline of

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instream channel habitat; loss or decline of instream woody material; change to, loss or decline of natural bed substrate; disruption to nesting birds and other wildlife; direct take of terrestrial species; disturbance from project activities; loss of connectivity; loss of connection to hyporheic zone; loss or impediment of terrestrial animal species travel routes due to temporary structures (e.g., survey tape, sandbags, erosion protection materials etc.); change in stream flow; change in percolation; and, impediment to migration of aquatic and terrestrial species.

Proposed impacts to CDFW jurisdiction total 0.83 acre (889 linear feet), of which 0.77 acre consists of riparian habitat. Proposed temporary impacts to CDFW jurisdiction total 0.02 acre of CDFW jurisdiction, none of which consists of riparian vegetation [Exhibit 3]. Table 1 below provides permanent impacts to CDFW jurisdiction by impact type and Table 2 below provides temporary impacts to CDFW jurisdiction by type. Table 3 below provides permanent impacts to CDFW jurisdiction by vegetation community.

### Permanent Impacts

**Table 1. Permanent Impacts to CDFW Jurisdiction by Type.**

<b>Drainage Feature</b>	<b>Type</b>	<b>Non-Riparian Streambed (acres)</b>	<b>Riparian Vegetation (acres)</b>	<b>Total (acres)</b>	<b>Linear Feet</b>
<b>Drainage A</b>	Building Pad/Single Family Residential	0.02	0.09	0.11	401
<b>Drainage A</b>	Culvert/Rip-Rap/Grade Control Structures	<0.01	0.03	0.03	81
<b>Drainage A</b>	Road Construction	0.01	0.21	0.22	197
<b>Drainage A</b>	Water Quality Basin	0.03	0.09	0.12	186
<b>Tributary A-1</b>	Remedial Grading	0	0.35	0.35	24
<b>Total</b>		<b>0.06</b>	<b>0.77</b>	<b>0.83</b>	<b>889</b>

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**Table 2. Temporary Impacts to CDFW Jurisdiction by Type**

<b>Drainage Feature</b>	<b>Type</b>	<b>Unvegetated Streambed (acres)</b>	<b>Riparian Habitat (acres)</b>	<b>Total (acres)</b>	<b>Linear Feet</b>
<b>Drainage A</b>	Remedial Grading and Temporary Grading for Crossing Construction	0.02	Counted as a permanent impact above	0.02	411
<b>Total</b>		<b>0.02</b>	<b>0</b>	<b>0.02</b>	<b>411</b>

**Table 3. Permanent Impacts to CDFW Jurisdiction by Vegetation Community**

<b>CDFW Resource Type</b>	<b>Vegetation Community</b>	<b>Impacted Area</b>
Non-Riparian Streambed	Coastal Sage Scrub	0.01
	Unvegetated Streambed	0.05
<b>Non-Riparian Total</b>		<b>0.06</b>
Riparian	Coast Live Oak Riparian Forest	0.67
	Coast Live Oak Riparian Forest/Ornamental	0.04
	Elderberry Scrub	0.01
	Emergent Wetland	0.015
	Mulefat Scrub	0.03
<b>Riparian Total</b>		<b>0.77</b>

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## MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

### 1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the Project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Project Initiation and Completion. Permittee shall notify CDFW, in writing, at least five (5) days prior to Project Initiation and at least five (5) days prior to completion of project activities. Notification shall be sent to the email address: [R5LSACompliance@wildlife.ca.gov](mailto:R5LSACompliance@wildlife.ca.gov), Reference # 1600-2018-0322-R5..
- 1.6 Implement as Proposed Unless Directed Differently by Agreement. The agreed work includes activities associated with the Project Location and Project Description that is provided above. Specific work areas and mitigation measures are described on/in the plans and documents submitted by Permittee with the Notification Package and shall be implemented as proposed unless as directed by this Agreement.
- 1.7 Designated Biologist(s). At least fifteen (15) days before initiating ground or vegetation disturbing activities, Permittee shall submit to CDFW for its review and approval a list of biological monitors (Designated Biologists) including their names, qualifications, business address and contact information. The Designated Biologist shall be knowledgeable and experienced in the biology and natural history of local fish and wildlife resources present at the project site. The Designated Biologist shall be responsible for monitoring at designated locations and conducting other project activities, including, but not limited to, prework surveys and focused

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surveys.

- 1.8 Designated Biologist Authority. The Designated Biologist shall have the responsibility to concurrently notify the Permittee and CDFW of any activity that is not in compliance with this Agreement, and/or to recommend to Permittee any reasonable measure to avoid or minimize impacts to fish and wildlife resources. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred as a result of compliance with this measure. This includes cease-work orders issued by CDFW.

## **2. Avoidance and Minimization Measures**

Permittee shall implement the following measures during project-related activities, to avoid or minimize adverse impacts to fish and wildlife resources.

- 2.1 Conditional Work during Rainfall Event. No work shall occur during an anticipated rainfall event. For purposes of this Agreement, "rainfall event" means events producing more than ¼ inch per 24-hour period and/or when measurable rain (¼ of an inch) with 50% or greater probability is forecasted within 72 hours. No work shall occur during a dry-out period of 24 hours after a rainfall event or less time should the work area not contain ponded water. Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the project area. All erosion control measures shall be initiated prior to all rainfall events.

### **Biological Resources**

- 2.2 Take of Protected Species. This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: a species fully protected under state law; a species listed under the California Endangered Species Act (CESA; Fish & G. Code § 2050 *et seq.*) and/or Endangered Species Act (ESA; 16 U.S.C. § 1531 *et seq.*); a species identified by CDFW as a species of special concern; a state-listed rare plant species; or any other species for which take is prohibited under state or federal law.
- 2.3 Leave Wildlife Unharmd. If any wildlife is encountered during the course of project activities, said wildlife shall be allowed to leave the project area unharmed. If any CESA or ESA-listed wildlife is encountered, Permittee shall contact CDFW immediately.
- 2.4 Movement of Terrestrial Species. Any newly constructed structure including but not limited to temporary and permanent fencing, shall be designed, constructed, and maintained such that it does not constitute a barrier to movement of wildlife unless intended to be wildlife exclusionary fencing. This includes but is not limited to the ingress and egress of wildlife across, under, over, and around structures. If any aspect of the proposed project results in a long-term reduction of wildlife

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movement, Permittee shall be responsible for all future activities and expenditures necessary, as determined by CDFW, to secure passage of wildlife across, under, over, and around the structure.

- 2.5 Designated Biologist. A Designated Biologist shall be on site to monitor all activities that result in the clearing or grading of sensitive habitat as well as grading, excavation, and/or other ground-disturbing activities within the project area. The monitor shall: 1) ensure that the limits of grading, grubbing, crushing or other ground-disturbing activities are delineated at the site as shown on the construction drawings and the maps submitted in the notification; 2) perform necessary surveys and take photographs during the construction process, as required by this Agreement; 3) Implement measures from the Biological Resources Construction Plan (BRCP) (Condition 2.7) approved by CDFW and U.S. Fish and Wildlife Service if California gnatcatcher are identified; 4) halt construction activities if any threatened or endangered species other than California gnatcatcher are identified and notify the appropriate agencies immediately; and 5) notify the project owner and CDFW of any non-compliance with this Agreement.
- 2.6 Pre-construction Surveys. The Designated Biologist shall conduct a general pre-construction survey for species likely to be found in the area or using the area to forage during the proposed project activities. Survey results, including negative findings, analysis, recommendations, and field notes shall be provided to CDFW upon request.
- 2.7 Biological Resources Construction Plan. Permittee shall prepare and submit to CDFW a Biological Resources Construction Plan (BRCP) for review and approval that provides for the protection of biological resources and to establish monitoring requirements to avoid impacts to present protected species, including coastal California gnatcatcher. The BRCP shall be based upon site conditions, project activities, and species present or likely to be present during all project activities. The buffer(s) shall be determined based upon the life history of the individual species; species sensitivity to noise, vibration, and general disturbance; current site conditions (screening vegetation, terrain, etc.) including ambient levels of human activity; the various project-related activities necessary to construct the project; and other features. Provisions for biological monitoring during construction activities shall be included to ensure compliance and success of each protective measure. The monitoring procedures will (1) identify specific locations of wildlife habitat and sensitive species to be monitored; (2) identify the frequency of monitoring, monitoring methodology (for each habitat and sensitive species to be monitored); (3) list required qualifications of biological monitor(s); and (4) identify reporting requirements.
- 2.8 Coastal California Gnatcatcher. Permittee shall have a Designated Biologist on site daily when construction activities are occurring within 500 feet of coastal California gnatcatcher habitat from March 1 to September 1 in order to ascertain presence/absence of nesting pairs (concurrent with other preconstruction survey protocol as outlined in this Agreement). If none are present, work may continue



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unless California gnatcatchers are confirmed nesting within 500 feet of active construction. Permittee shall also have the Designated Biologist on site daily when other protected species may be present to ensure that no impacts occur to protected species that are not authorized. Permittee shall resolve all CDFW comments on the BRCP prior to initiating project activities.

- 2.9 Dead or Injured Protected Species. Any dead or injured protected species found along roads or in project areas shall be reported to CDFW within 24 hours of the observation. The biologist shall report the location, cause of death, species found, and any other relevant information.
- 2.10 Nesting Bird Avoidance and Impact Minimization. If vegetation clearing, grading, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds (February 1 to September 1), a focused survey for active nests of such birds shall be conducted by a Designated Biologist beginning seven (7) days prior to the beginning of project-related activities with the final survey no more than 24 hours prior to work in the area. The results of the survey shall be submitted to the CDFW Region 5 office by email to [R5LSACompliance@wildlife.ca.gov](mailto:R5LSACompliance@wildlife.ca.gov) within 24 hours of completing the survey. The results of the survey shall include (1) dates of surveys, (2) total field time of survey efforts, (3) map of survey routes, (4) name of biologist, (5) location of any active nests and the species that were found, and (6) behavioral observation notes for each nest or territory. Refer to Notification Number 1600-2020-0064-R5 when submitting the survey to the CDFW.
- 2.10.1 If the survey identifies an active nest, a buffer shall be established between the construction activities and the active nest so that nesting activities are not interrupted. The buffer shall be delineated by temporary fencing if site conditions allow and does not create undue disturbance and shall be in effect throughout construction or until the nest is no longer active.
- 2.10.2 The buffer shall be a minimum of 300 feet (500 feet for raptors) of a non-CESA/ESA listed nesting migratory bird nest, and 500 feet of a CESA/ESA listed bird nest, or as otherwise approved in the BRCP for California gnatcatcher (Condition 2.7). Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.
- 2.10.3 Absent a 300/500-foot no impact buffer, the Designated Biologist shall prepare and submit a Bird Management and Monitoring Plan (Plan) to CDFW seven working days prior to desired implementation and includes survey results and establishes the necessary buffers to avoid take of nests as defined in FGC Section 3503 and 3503.5.
- 2.10.4 The Plan design shall be based upon site conditions, project activities, and species present or likely to be present during all construction activities. The buffer(s) shall be determined based upon the life history of the individual species; species and individual's sensitivity to noise, vibration, and general disturbance; current site conditions (screening vegetation, terrain, etc.), including ambient levels of human activity; the various project-related

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activities necessary to construct the project; and other features.

2.10.5 If project related activities cease for longer than five (5) days, a focused survey for active nest of such birds shall be conducted again by a Designated Biologist within seven (7) days prior to the beginning of project-related activities with the final survey no more than 24 hours prior to working in the area.

2.11 No Authorized Take of Nesting Birds. The Permittee shall not take or destroy nests (or eggs) of birds that are designated under Federal and California State laws, MBTA, and FGC Section 3503, 3503.5, 3505, 3513.

2.12 Bat Roost Avoidance and Impact Minimization. To avoid the direct loss of bats that could result from removal of trees that may provide day or night roost habitat (e.g., in cavities or under loose bark), the Permittee shall implement the following measures:

2.12.1 Permittee shall avoid suitable bat roosting tree removal from March 1 to September 30 to avoid impacts to bat maternity season. Trees determined to be a maternity roost for nursery colonies shall be left in place until the end of maternity season or until the Designated Biologist verifies no pregnant females and young in non-volant stage are present. Where suitable bat roosting tree and vegetation removal is restricted elsewhere in this Agreement, the more restrictive shall apply.

2.12.2 No less than 30 days before scheduled vegetation removal, Permittee shall have the Designated Biologist, approved by CDFW specifically for bats, conduct a pre-project reconnaissance survey to identify those trees proposed for disturbance that could provide hibernacula, roosting, or nursery colony habitat for bats.

2.12.3 Trees that are observed to have bat roosts shall not be sawed up or mulched immediately. A period of at least 24 hours, and preferably 48 hours at discretion of Designated Biologist and/or CDFW, shall elapse prior to such operations to allow bats to escape.

2.12.4 If bats are not detected, but the Designated Biologist determines that roosting bats may be present at any time of year, Permittee shall slowly push any tree/structure down under operator's control using heavy machinery rather than felling it with a chainsaw. In order to ensure the optimum warning for any roosting bats that may still be present, the tree shall be pushed lightly two to three times, with a pause of approximately 30 seconds between each nudge to allow bats to become active. The tree shall then be pushed to the ground slowly and shall remain in place until it is inspected by the Designated Biologist and the above condition is implemented.

2.12.5 The Designated bat Biologist shall document all pre-project reconnaissance survey activities and prepare a summary report including a

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map of confirmed locations of bat roosts to CDFW upon completion of the pre- project reconnaissance survey.

- 2.13 Notification to the California Natural Diversity Database. If any Protected Species are observed in project surveys, the Designated Biologist shall have responsibility to submit a California Native Species Field Survey Form and survey map to be submitted to the Natural Diversity Database within 5 working days of the sightings. The form is available online at: <http://www.wildlife.ca.gov/biogeodata/cnddb/>. Instructions for completing and submitting the form are available at: [http://www.wildlife.ca.gov/biogeodata/cnddb/submitting\\_data\\_to\\_cnddb.asp](http://www.wildlife.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp).
- 2.14 Educational Program. Permittee shall conduct an Education Program for all persons employed or otherwise working on the Project prior to performing any work on site. The program shall consist of a presentation from a Designated Biologist that includes a discussion of the biology of the habitats and species identified in this Agreement and present at this site. The Designated Biologist shall also include as part of the education program information about the distribution and habitat needs of any Protected Species that may be present, legal protections for those species, penalties for violations, and project-specific protective measures included in this Agreement. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on site. The Permittee shall prepare and distribute wallet-sized cards or a fact sheet that contains this information for workers to carry on site. Upon completion of the education program, employees shall sign a form stating they attended the program and understand all protection measures. These forms shall be filed at the worksite offices and be available to CDFW upon request. The Education Program shall be repeated annually for part of the project extending more than one (1) year. Copies of program materials shall be maintained at the project site for workers to reference as needed.
- 2.15 Invasive Species Education Program. Permittee shall include invasive species in the Education Program for all persons working on the Project prior to the performing any work on site. The program shall consist of a presentation from a Designated Biologist that includes a discussion of the invasive species currently present within the project site as well as those that may pose a threat to, or have the potential to, invade the project site. The discussion shall include a physical description of each species and information regarding their habitat preferences, local and statewide distribution, modes of dispersal, and impacts. The program shall also include a discussion of BMPs to be implemented at the project site to avoid the introduction and spread of invasive species into and out of the project site.
- 2.16 Disturbance or Removal. Disturbance or removal of vegetation shall not exceed the limits approved by this Agreement. Any disturbed portions of any stream channel margin outside of the project limits shall be restored to their original condition under the direction of CDFW.

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- 2.17 Temporary Disturbance. Permittee shall restore all areas within the project area temporarily impacted by project activities, such as staging areas and temporary access areas. Temporary impact areas altered during the project shall be returned to natural contours without creating a possible future bank erosion problem.
- 2.18 Stockpiled Vegetation. Vegetation removed from the construction activities shall not be stockpiled in the low flow channel of the lake/stream. Any materials placed in seasonally dry portions of the lake/stream that may be washed downstream shall be removed from these areas prior to inundation by high flows. The sites selected on which to push this material out of the stream should be selected in compliance with the other provisions of this Agreement. Where possible, brush piles shall be left outside the channel in upland areas to provide wildlife habitat, except where rodent populations may be deemed a nuisance (e.g. near residential properties). Brush piles shall not be placed in areas that may impact sensitive floral resources or dormant seeds.
- 2.19 Demarcate Work Area Boundary. In consultation with the Designated Biologist, Permittee shall demarcate the outer perimeter of the work area to prevent damage to adjacent habitat, and to provide visual orientation to its limits. Marking shall be in place during all periods of operation. All persons employed or otherwise working on the project site shall be instructed about the restrictions that the marking represent.
- 2.20 Non-native Vegetation. Permittee shall remove non-native vegetation from the work area and shall dispose of it in a legal manner; in all cases it shall be placed in a manner which prevents its reestablishment in the stream, and in such a manner so that it does not negatively affect other sensitive native habitat communities.
- 2.21 Fill and Spoil. Fill length, width, and height dimensions shall not exceed those of the original design/installation or the original naturally occurring topography, contour, and elevation. Fill shall be limited to the minimal amount necessary to accomplish the agreed activities.
- 2.22 Cover Trenches and Other Hazards. All steep-walled trenches or hazards associated with the project shall be covered at all times except when being actively used, to prevent entrapment of wildlife (e.g., reptiles and small mammals). If trenches cannot be covered, exclusion fencing shall be installed around the trench or hazard. Open trenches, or other hazards, shall be inspected by the Designated Biologist daily and immediately before backfilling.
- 2.23 Soil Stabilization. Permittee shall stabilize all disturbed soils within the Project site to reduce erosion potential, both during and following work. Loose or compacted soil areas on stream banks that were temporarily impacted shall be restored.

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## **Pollution, Sedimentation, and Litter**

- 2.24 Pollution and Litter Laws. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Permittee to insure compliance.
- 2.25 Trash Receptacles. Permittee shall install and use fully covered trash receptacles with secure lids (wildlife proof) to contain all food, food scraps, food wrappers, beverage containers, and other miscellaneous trash. Trash containers shall be emptied daily and removed from the project site when work is complete.
- 2.26 Spill Containment. All activities performed in or near a stream shall have absorbent materials designated for spill containment and cleanup activities on site for use in an accidental spill. If a spill occurs Permittee shall immediately notify the California Office of Emergency Services at 1-800-852-7550 and immediately initiate the cleanup activities. CDFW shall also be notified by the Permittee and consulted regarding clean-up procedures.
- 2.27 Equipment and Vehicles. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
- 2.28 Stationary Equipment. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on site prior to the start of work.
- 2.29 Staging and Storage Areas. Staging/storage areas for equipment and materials shall be located outside of the stream/lake. Any materials placed in seasonally dry portions of a stream or lake that could be washed downstream or could be deleterious to aquatic life shall be removed from the project site prior to inundation by high flows.
- 2.30 Equipment Maintenance. No equipment maintenance shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- 2.31 Turbidity and Siltation. All equipment that enters the streambed or habitat associated with the stream shall be clean and dry. Upon CDFW determination that turbidity/siltation levels resulting from project-related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective CDFW-approved control devices are installed, or abatement procedures are initiated.

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2.32 Prohibited Plant Species. Permittee shall not plant, seed, or otherwise introduce invasive exotic plant species. Prohibited exotic plant species include those identified in the California Exotic Pest Plant Council's database, which is accessible at: <https://www.cal-ipc.org/docs/ip/inventory/pdf/Inventory2006.pdf>.

2.33 Notification of Invasive Species. Permittee shall notify CDFW immediately if an invasive species not previously known to occur within the project site is discovered during project activities by submitting a completed Suspect Invasive Species Report (available online at: <https://wildlife.ca.gov/Conservation/Invasives/Report> and photos to the Invasive Species Program by email at: [invasives@wildlife.ca.gov](mailto:invasives@wildlife.ca.gov). Notification may also be provided by calling (866) 440- 9530. Upon receiving notification, CDFW will provide Permittee with guidance for further action as appropriate to the species.

### **Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

3.1 Temporary Impacts. Permittee shall restore all areas within the project area temporarily impacted by project activities, such as staging areas and temporary access areas. Permittee shall remove all temporary infrastructure (i.e. gravel bag berm). Temporary impact areas altered during the project shall be returned to natural contours without creating a possible future bank erosion problem and revegetated with mulefat (*Baccharis salicifolia*). Restoration of temporary impacts will be completed within one calendar year after construction activities are completed.

3.2 Permanent Impacts. Permittee shall mitigate the loss of 0.83 acre, of which 0.77 acre consists of coast live oak riparian habitat, through the creation of 1.53 acres of coast live oak riparian forest, of 0.016 acre of southern cattail emergent wetland, 0.14 acre of streambed vegetated with transitional elderberry scrub/mulefat scrub riparian habitat within the Lyon Residence Parcel, Parcel 1 [Exhibit 6 – Mitigation Map].

Permittee shall preserve a total of 2.65 acres of coast live oak riparian forest, 0.08 acre of southern cattail emergent wetland, and 0.09 acre of streambed within Parcel 1 [Exhibit 6 – Mitigation Map].

Permittee shall mitigate for 0.01 acres of CDFW-jurisdictional coastal sage scrub as part of on-site preservation of 13.60 acres of coastal sage scrub within Parcel 2 and 4.30 acres of coastal sage scrub in Parcel 1 [Exhibit 7 – Overall Project Map]. The on-site preserved habitat shall be protected by a Conservation Easement for which the United States Fish and Wildlife Service will be a Third-Party Beneficiary.

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#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

Notification Prior to Work. Permittee shall notify CDFW, in writing, at least five (5) days prior to initiation of project-related activities and at least five (5) days prior to completion of project and mitigation activities. Notification shall be sent to the email address: [R5LSACompliance@wildlife.ca.gov](mailto:R5LSACompliance@wildlife.ca.gov), Reference # 1600-2020-0064-R5.

4.1 Reporting. All surveys, pre and post work notifications, monitoring reports and any other required communication between the Permittee and CDFW shall be submitted in digital copy to [R5LSACompliance@wildlife.ca.gov](mailto:R5LSACompliance@wildlife.ca.gov), Reference # 1600-2020-0064-R5. If CDFW requests hard copies of any documentation, Permittee shall mail to 3883 Ruffin Road, San Diego 92123, Attn: Streambed Unit, Reference# 1600-2020-0064-R5.

4.2 Annual Mitigation Monitoring Reports for On-Site Mitigation. Monitoring results and analysis of the mitigation area shall be summarized on an annual basis and submitted to CDFW by January 1 of each year after mitigation activities have commenced. The first report shall be submitted one year after mitigation activities are initiated. Photos from designated photo stations shall be included as well as any recommendations to be implemented for the following monitoring year.

4.3 Format of Reports. All reports shall be submitted in electronic versions and hard copy upon request. The information submitted electronically shall be placed on a compact disc. The electronic files shall include geographic information system (GIS) shapefiles, along with the appropriate metadata, of the project area and mitigation area.

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## **CONTACT INFORMATION**

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

### To Permittee:

Bill H. Lyon  
P.O. Box 8858  
Newport Beach, CA 92658  
E-Mail: [BillH.Lyon@Corp-Enterprises.com](mailto:BillH.Lyon@Corp-Enterprises.com)

### To CDFW:

Department of Fish and Wildlife  
South Coast Region  
3883 Ruffin Rd.  
San Diego, CA 92123  
Attn: Lake and Streambed Alteration Program  
Notification #1600-2020-0064-R5  
[R5LSACompliance@wildlife.ca.gov](mailto:R5LSACompliance@wildlife.ca.gov)

## **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with, the project. The decision to proceed with the project is Permittee's alone.

## **SUSPENSION AND REVOCATION**

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to



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immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or any activity related to the project.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective,

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unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **EXTENSIONS**

In accordance with FGC section 1605(b), Permittee may request the Agreement to be extended for one (1) 5-year extension, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC section 1605(f)).

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

## **TERM**

This Agreement shall expire on December 31, 2025 unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term.

Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

## **EXHIBITS**

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. Exhibit 1. Regional Map

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- Exhibit 2. Vicinity Map
- Exhibit 3. CDFW Impact Map
- Exhibit 3a. CDFW Impact Map
- Exhibit 3b. CDFW Fee Map
- Exhibit 5. Site Plans
- Exhibit 6. Mitigation Map
- Exhibit 7. Overall Project Map

## AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

## AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

## CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

## FOR LYON SUBDIVISION, VESTING TENTATIVE TRACT MAP (VTM) #17950

DocuSigned by:  
*Bill H. Lyon*  
32203ED4895E415...

12/28/2020

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Bill H. Lyon  
Applicant

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Date

## FOR DEPARTMENT OF FISH AND WILDLIFE

DocuSigned by:  
*David Mayer*  
D700B4520375406...

12/29/2020

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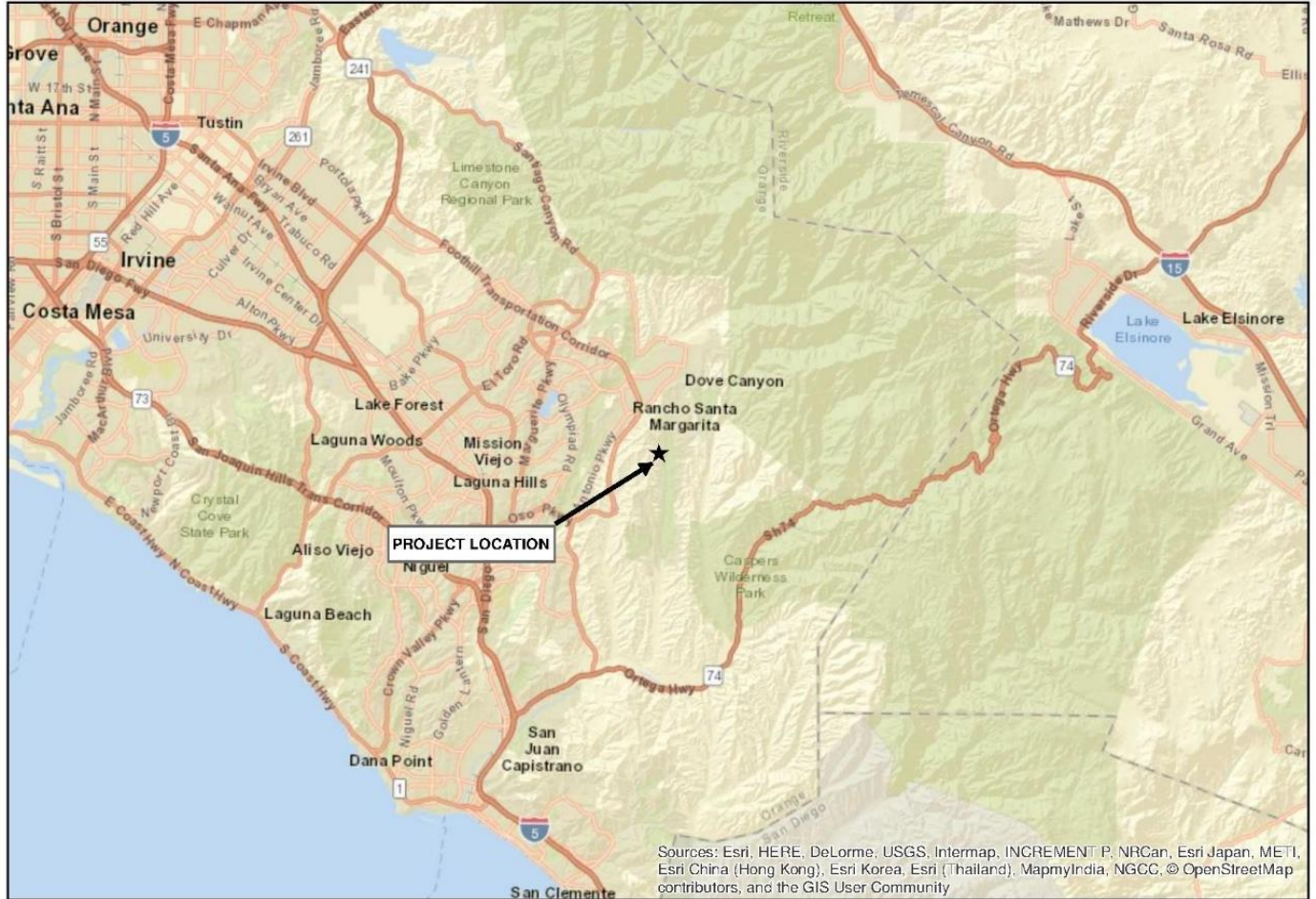
David Mayer  
Environmental Program Manager

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Date

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Source: ESRI World Street Map



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

**LYON SUBDIVISION VTTM 17950**  
Regional Map

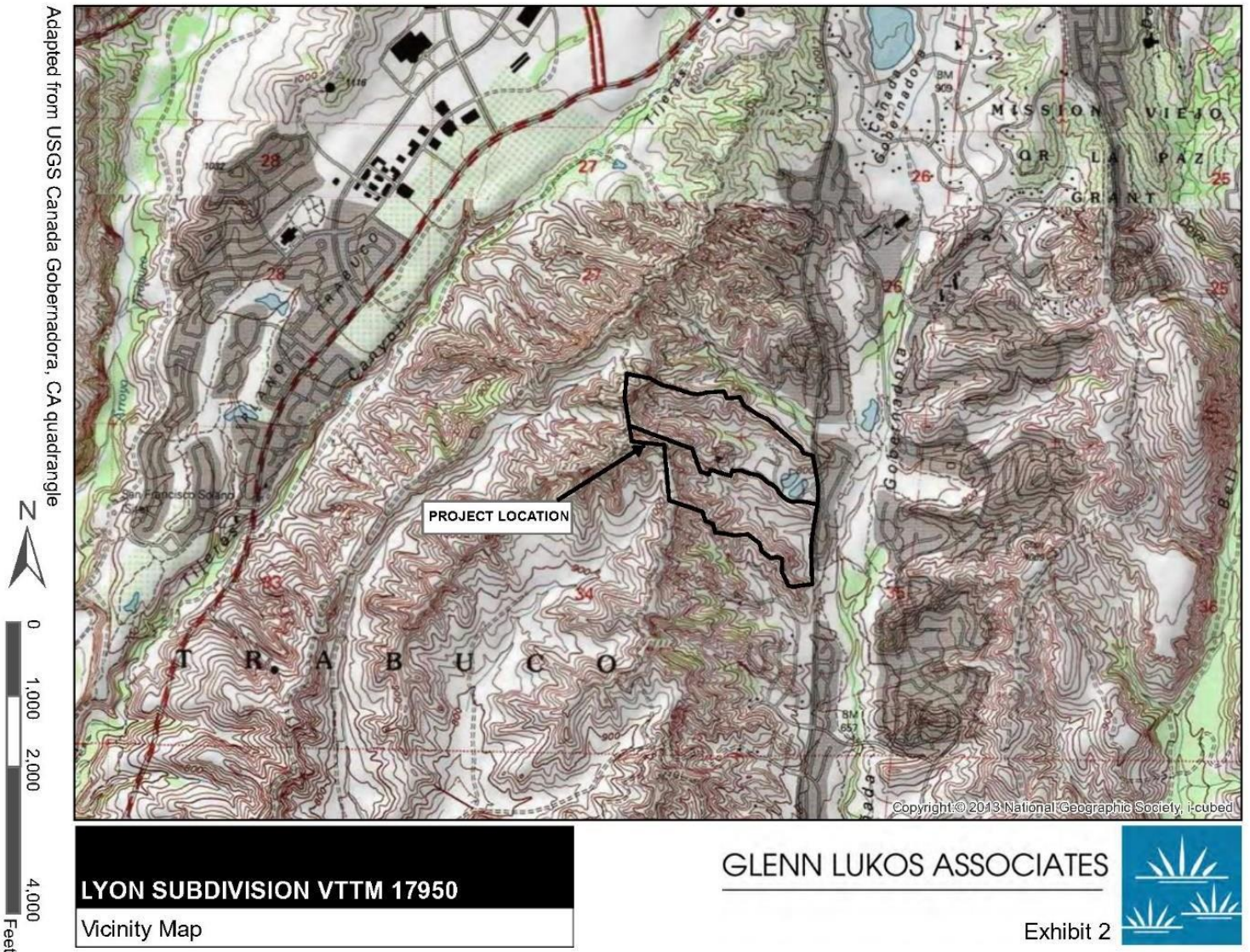
**GLENN LUKOS ASSOCIATES**



Exhibit 1

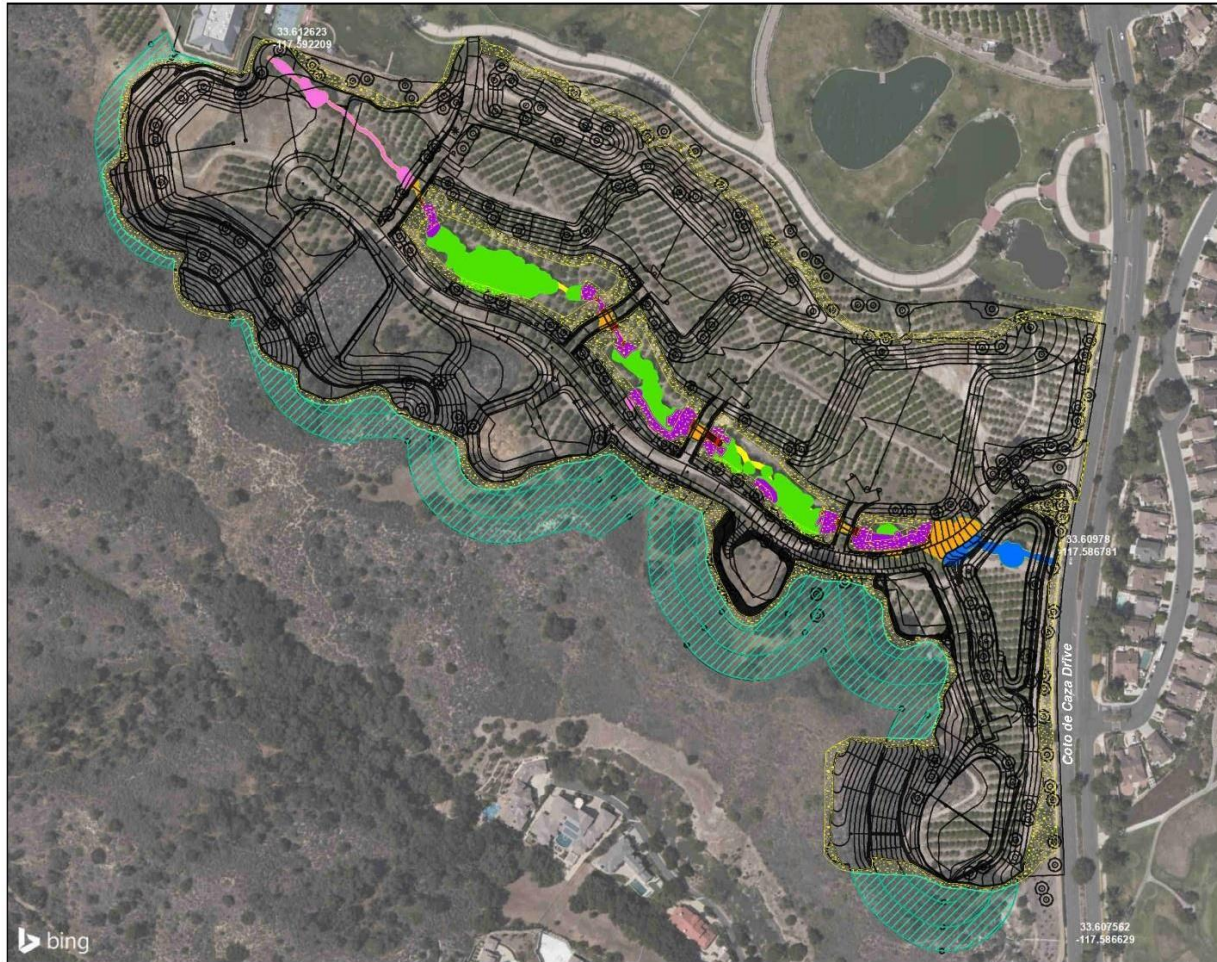


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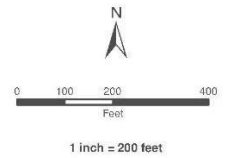




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- Project Site Plan
- Limits of Remedial Grading
- Avoided CDFW Riparian
- Avoided CDFW Non-Riparian Streambed
- Fuel Modification Zones
- Impacted CDFW Jurisdiction**
- Building Pads/Single Family Residential
- Culvert/Rip-Rap/Grade Control Structures
- Remedial Grading/Temporary Grading for Crossing Construction
- Road Construction
- Water Quality Basin



Coordinate System: State Plane 6 NAD 83  
Projection: Lambert Conformal Conic  
Datum: NAD83  
Map Prepared by: K. Karumen, CLA  
Date Prepared: November 7, 2019

**LYON SUBDIVISION VTTM 17950**  
CDFW Jurisdictional Delineation/Impact Map

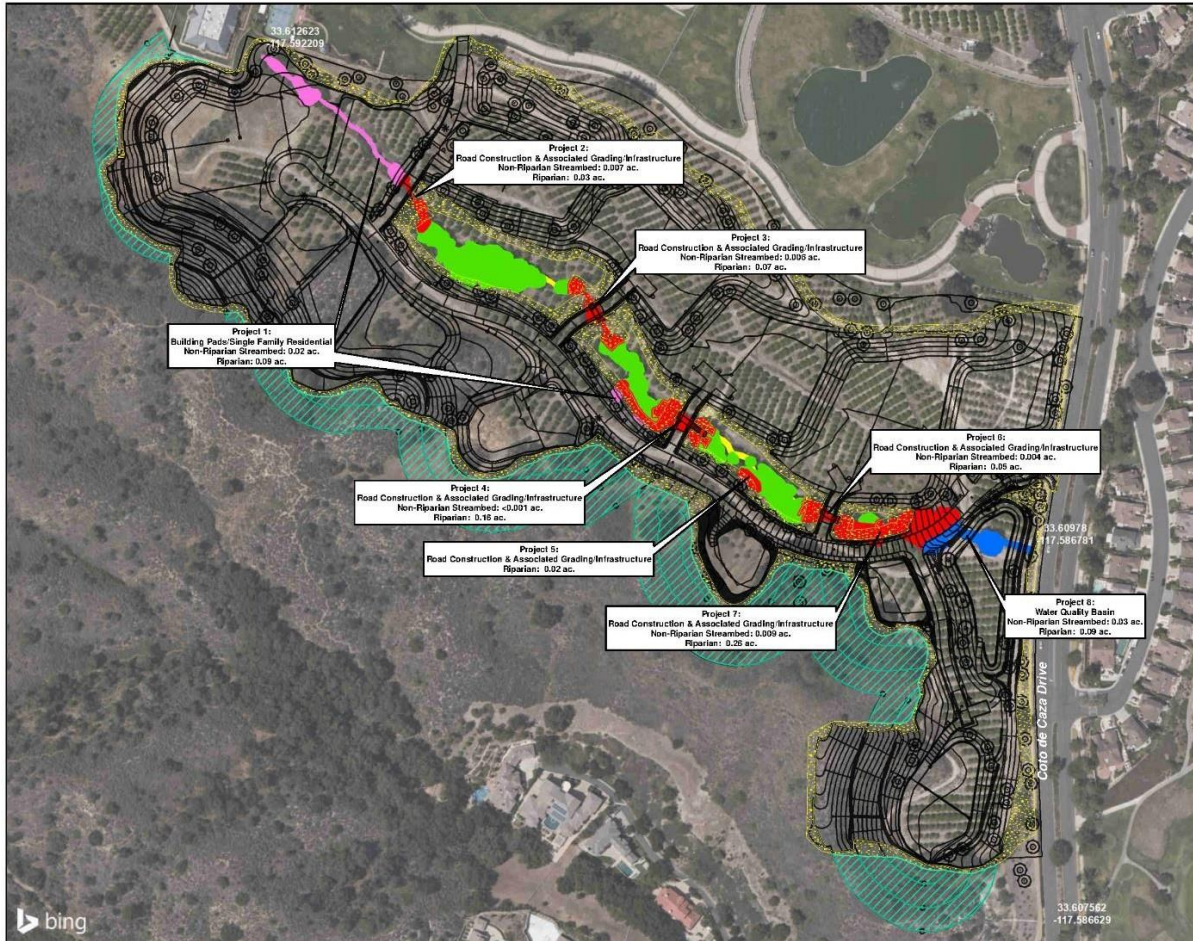
**GLENN LUKOS ASSOCIATES**

Exhibit 3A

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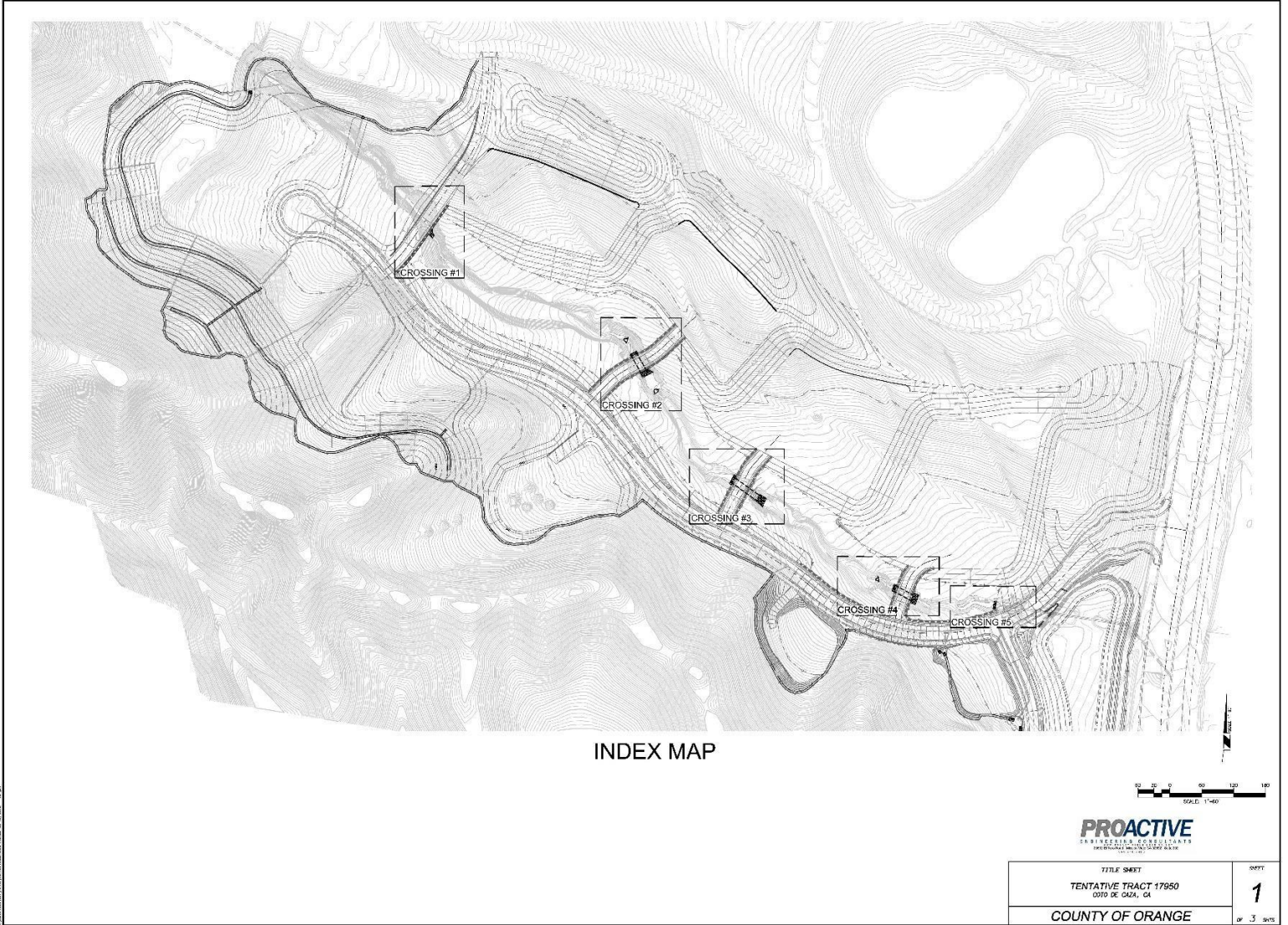


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Exhibit 5. Site Plans.

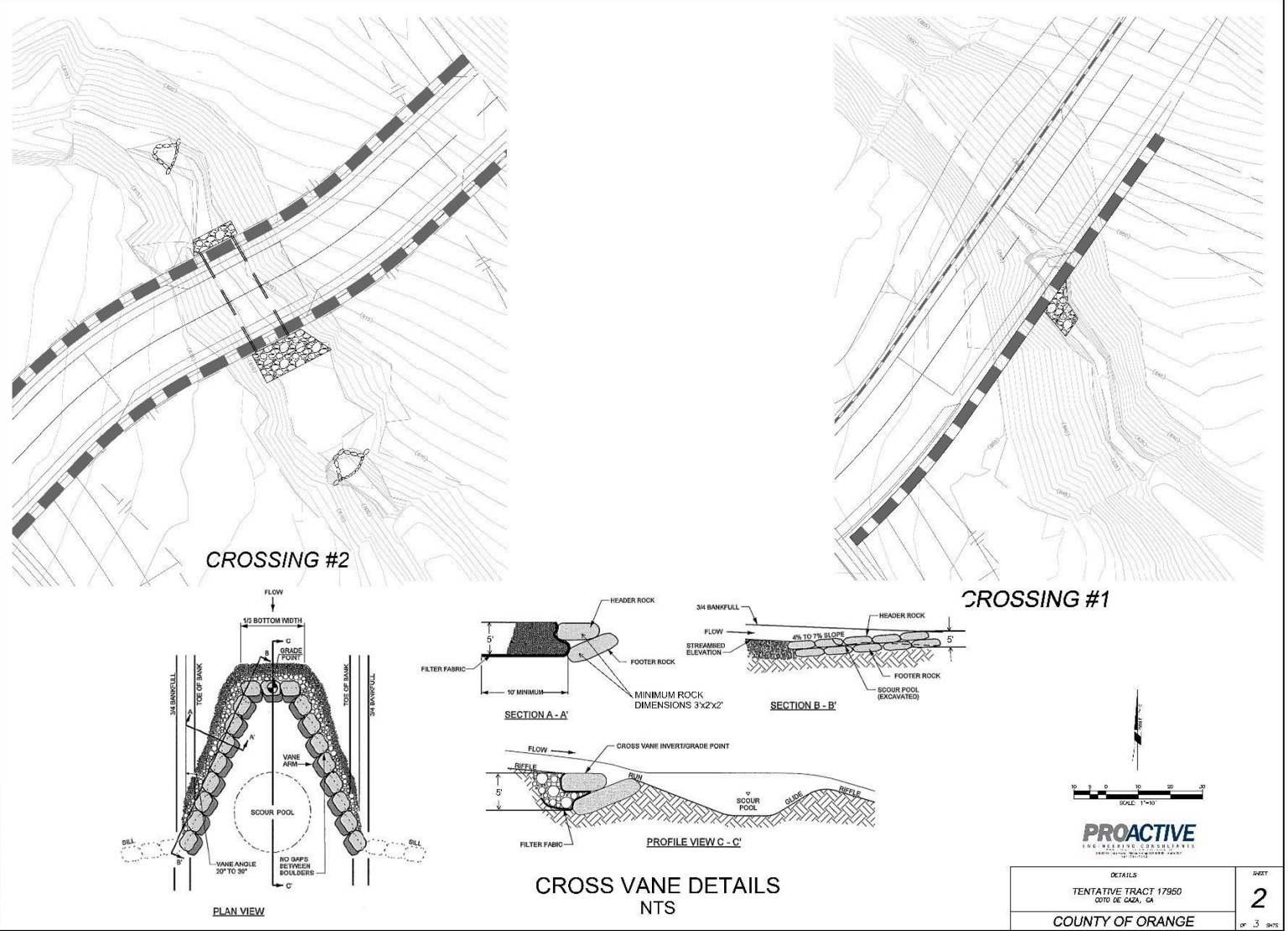


**PROACTIVE**  
ENGINEERS & ARCHITECTS  
INCORPORATED  
1000 WEST GARDEN AVENUE  
SUITE 200  
ORANGE, CA 92668  
TEL: 714.952.0000  
WWW.PROACTIVECA.COM

TITLE SHEET	DATE
TENTATIVE TRACT 17950 0310 DE 0424, CA	1
COUNTY OF ORANGE	OF 3 SHEETS



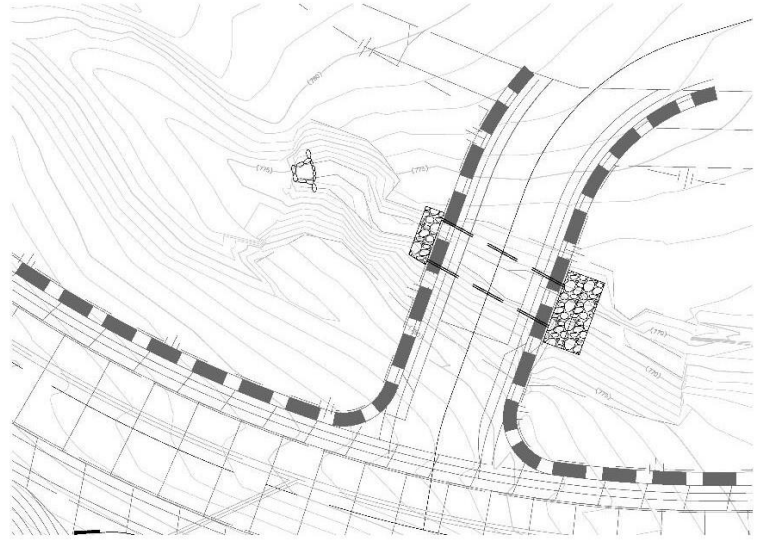
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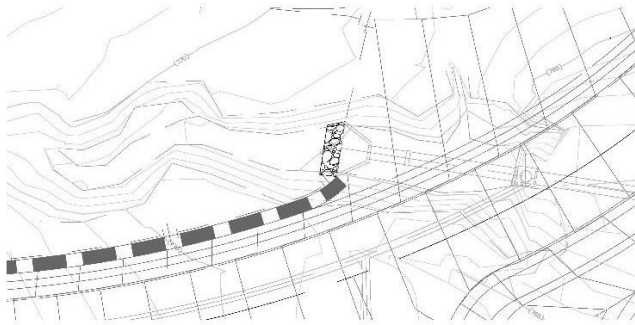
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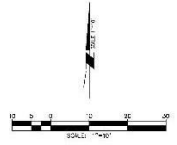
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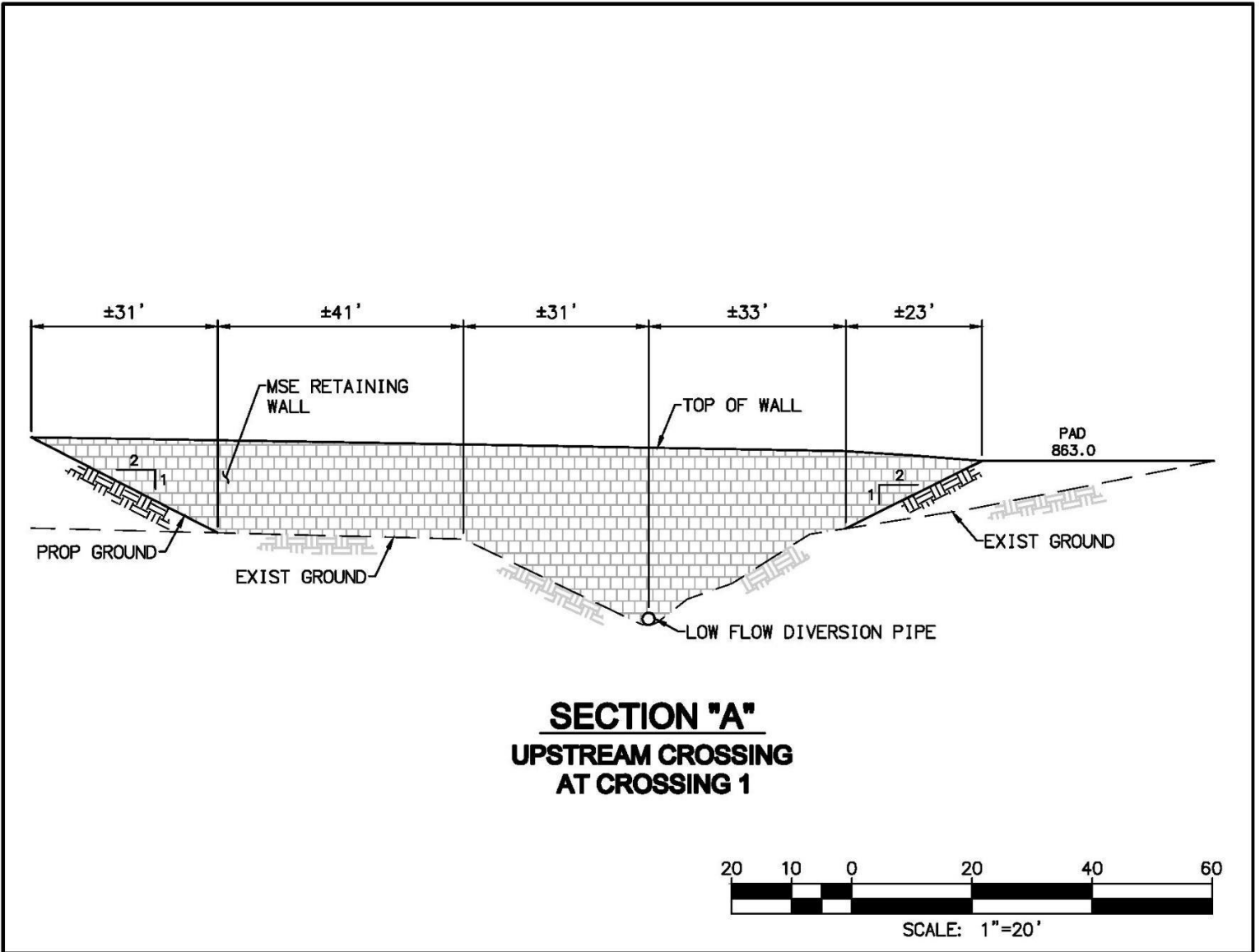
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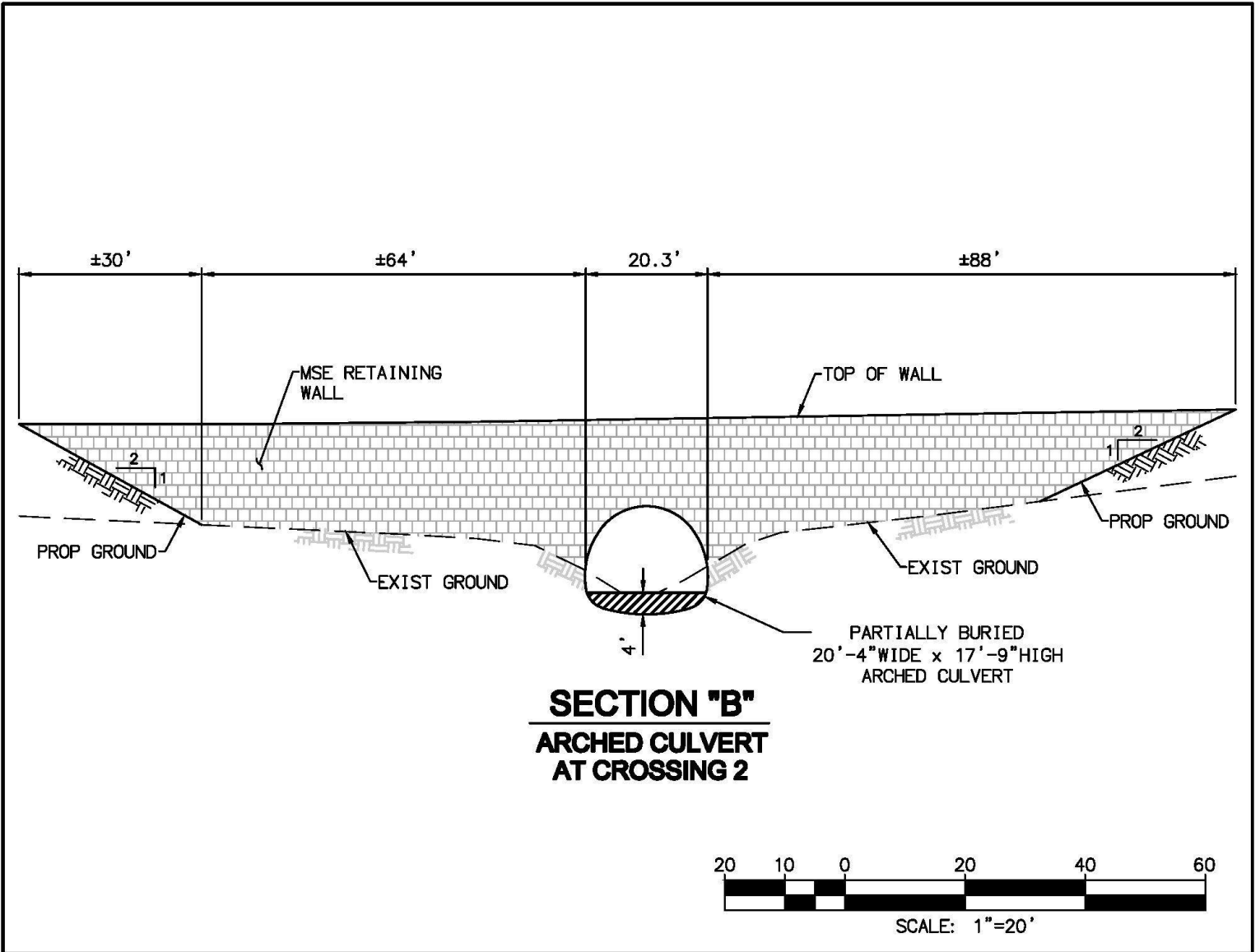
**PROACTIVE**  
ENVIRONMENTAL CONSULTANTS

DETAILS		SCALE
TENTATIVE TRACT 17950		3
COUNTY OF ORANGE		

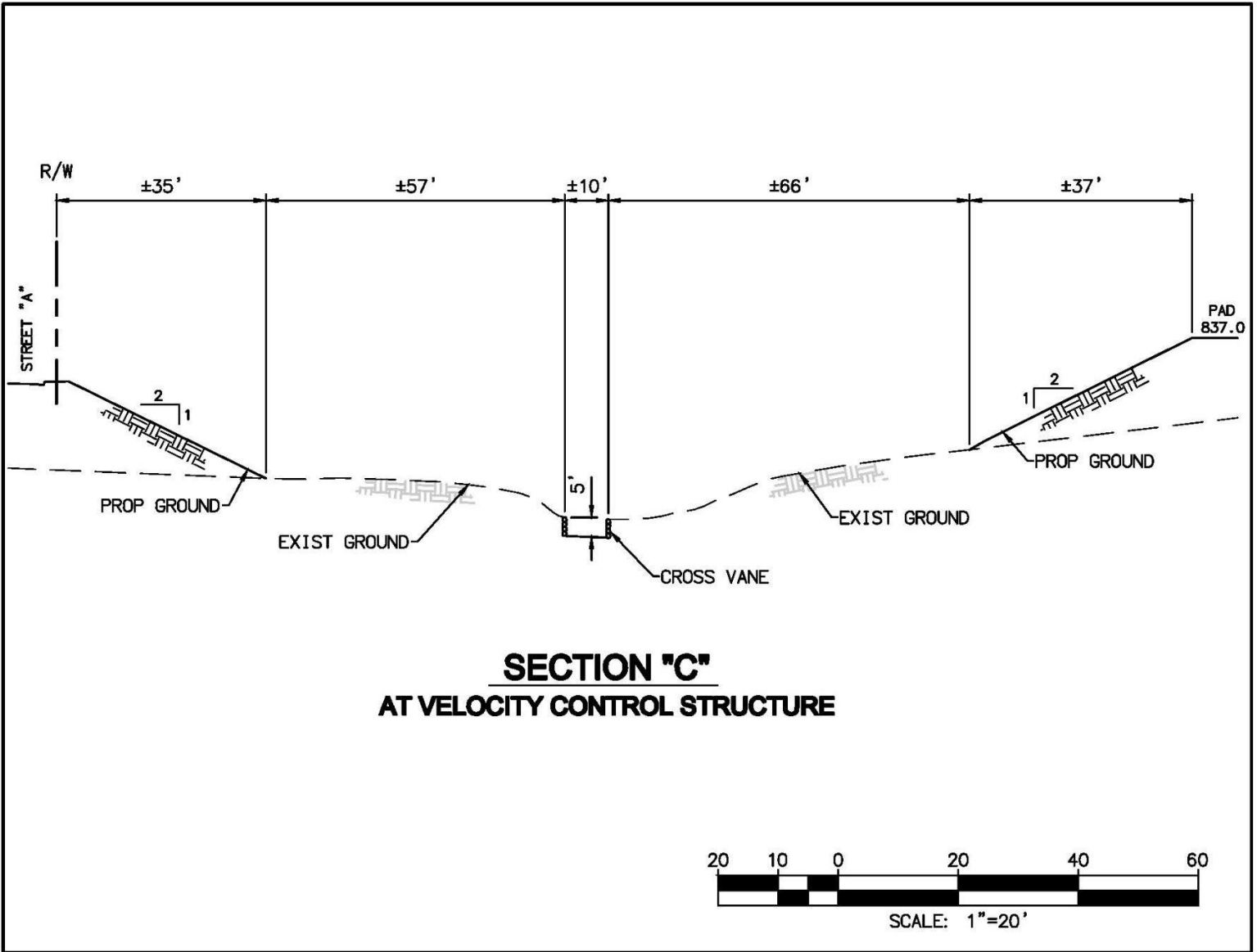
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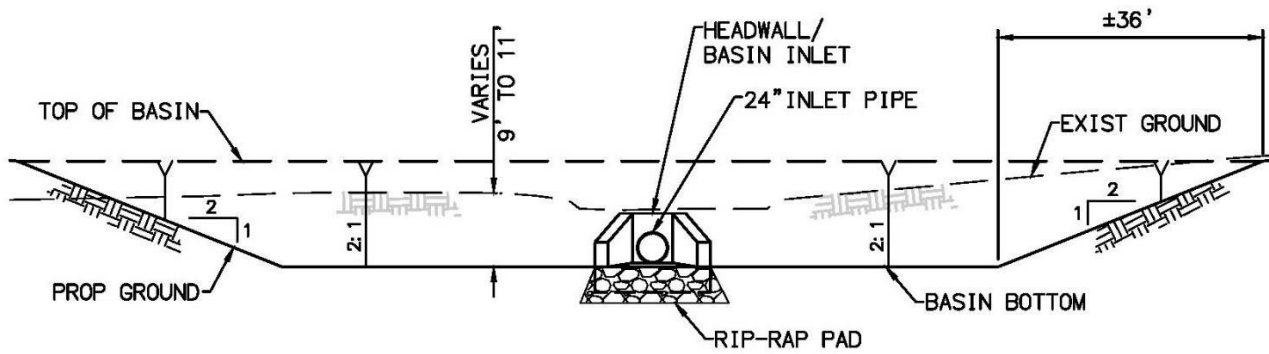
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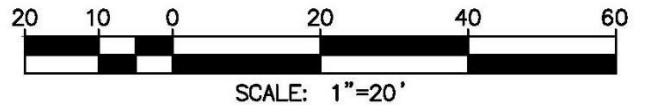
Mr. Bill Lyon  
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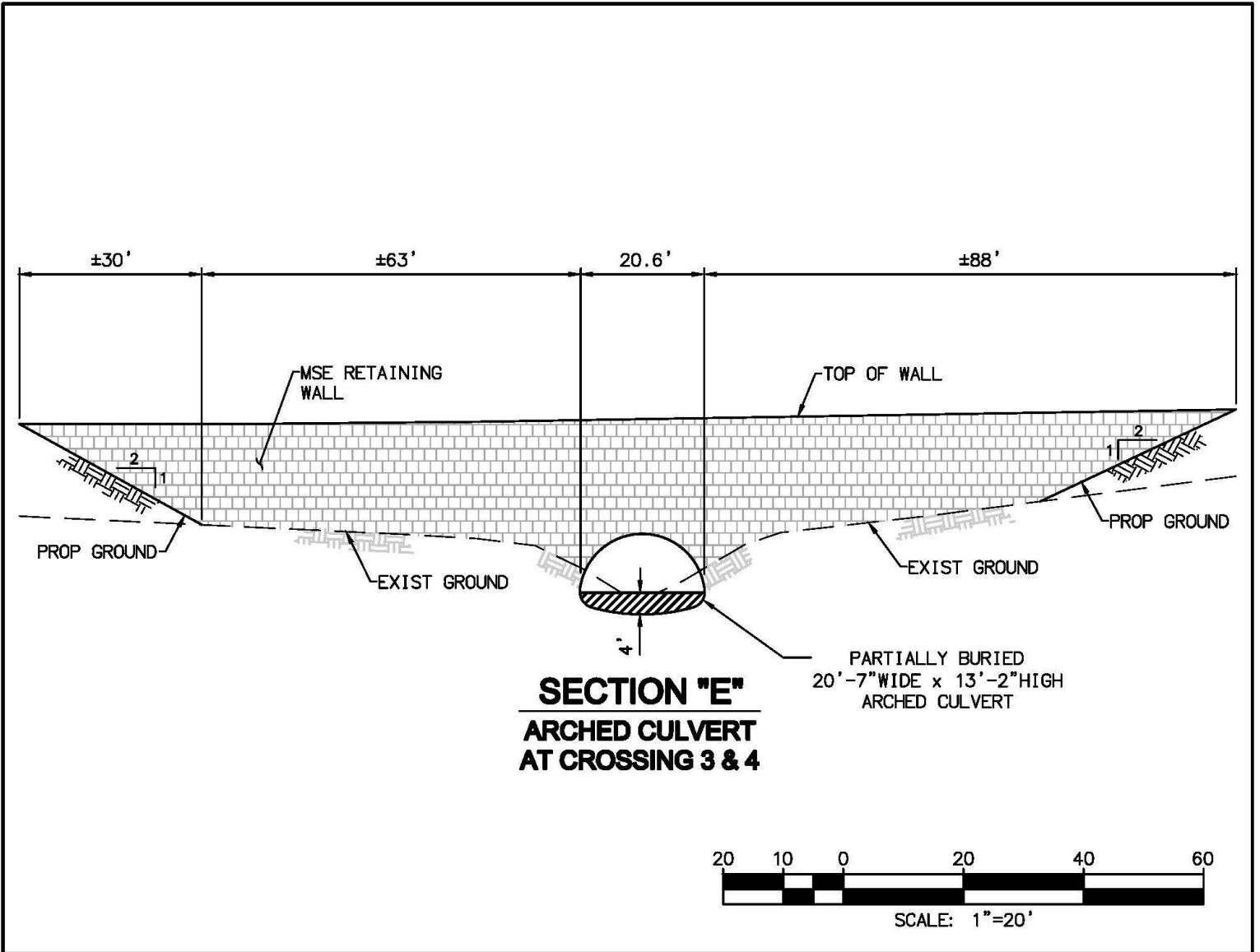
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**SECTION "D"**  
**AT FLOOD CONTROL & WATER QUALITY BASIN**



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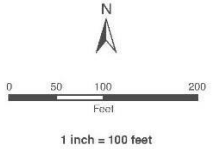




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- Property Boundaries
- Oak Riparian Preservation (2.65 ac.)
- Oak Riparian Establishment (1.53 ac.)
- Wetland Preservation (0.08 ac.)
- Wetland Establishment (0.016 ac.)
- Streambed Preservation (0.09 ac.)
- Streambed Establishment (0.14 ac.)



Coordinate System: State Plane 6 NAD 83  
Projection: Lambert Conformal Conic  
Datum: NAD 83  
Map Prepared by: B. Gale, GLA  
Date Prepared: October 7, 2019

**LYON SUBDIVISION VTTM 17950**

Mitigation Map

GLENN LUKOS ASSOCIATES 

Exhibit 6

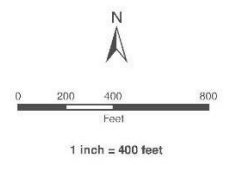
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 December 28, 2020  
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- Property Boundaries
  - Project Site Plan
  - Existing Open Space and Trail Easement - 5.92 ac.
  - Fuel Modification Zones
  - Limits of Remedial Grading
- Parcel 1**
- Streambed Preservation (0.09 ac.)
  - Streambed Establishment (0.14 ac.)
  - Coastal Sage Scrub Preservation (1.30 ac.)
  - Coast Live Oak Riparian Preservation (2.65 ac.)
  - Coast Live Oak Riparian Establishment (1.53 ac.)
  - Coast Live Oak Woodland Preservation (1.08 ac.)
  - Wetland Preservation (0.08 ac.)
  - Wetland Establishment (0.016 ac.)
- Parcel 2**
- Coastal Sage Scrub Avoidance (3.83 ac.)
  - Coastal Sage Scrub Preservation (13.60 ac.)
  - Coast Live Oak Riparian Avoidance (0.77 ac.)
  - Coast Live Oak Woodland Avoidance (1.40 ac.)
  - Coast Live Oak Woodland Preservation (0.39 ac.)



Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: B. Gale, GLA  
 Date Prepared: October 7, 2019

**LYON SUBDIVISION VTTM 17950**  
 Proposed Mitigation/Avoidance Areas Map

GLENN LUKOS ASSOCIATES   
 Exhibit 7

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