



March 18, 2022

Dan Boyd  
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**SUBJECT:** Jurisdictional Delineation of the Keller Crossing Residential Development Project and Associated Off-Site Improvement Areas Located in the Community of French Valley, Riverside County, California

Dear Mr. Boyd:

This letter report summarizes our preliminary findings of U.S. Army Corps of Engineers (Corps), Regional Water Quality Control Board (Regional Board), and California Department of Fish and Wildlife (CDFW) jurisdiction for the Keller Crossing Residential Development Project and Associated Off-Site Improvements Areas (collectively, Project/Study Area) in the Community of French Valley, Riverside County [Exhibit 1 – Regional Map].<sup>1</sup>

The Study Area comprises approximately 240.40 acres (196.04 acres onsite and 44.36 acres offsite) and contains one blue-line drainage (as depicted on the U.S. Geological Survey (USGS) topographic maps Bachelor Mountain (dated 1953 and photorevised in 1973) and Winchester, California (dated 1953 and photorevised in 1979) [Exhibit 2 – Vicinity Map]. On February 3 and July 14, 2021, regulatory specialists of Glenn Lukos Associates, Inc. (GLA) examined the Project [Exhibit 3 – Project Aerial Map] to determine the presence and limits of (1) Corps jurisdiction pursuant to Section 404 of the Clean Water Act (CWA), (2) Regional Board jurisdiction pursuant to Section 401 of the CWA and Section 13260 of the California Water Code (CWC), and (3) CDFW jurisdiction pursuant to Division 2, Chapter 6, Section 1600-1617 of the Fish and Game Code.

On February 16, 2021, GLA, on behalf of D.R. Horton, Inc. (Client), submitted a request to secure an Approved Jurisdictional Determination (AJD) from the Corps under the *Navigable*

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<sup>1</sup> This report presents our best effort at estimating the subject jurisdictional boundaries using the most up-to-date regulations and written policy and guidance from the regulatory agencies. Only the regulatory agencies can make a final determination of jurisdictional boundaries.

Dan Boyd  
D.R. Horton, Inc.  
March 18, 2022  
Page 2

*Waters Protection Rule*<sup>2</sup> (NWPR). The AJD review area included the onsite portion of the Project and associated off-site improvement areas along Keller Road, Pourroy Road, Winchester Ave./SR 79, and Washington Street [Exhibit 4a]. On April 6, 2021, the Corps issued an AJD pursuant to 33 CFR Part 325.9, confirming that the Study Area does not contain waters of the U.S. A copy of the AJD letter is provided as Appendix A.

The following aerial maps depicting the areas of Regional Board [Exhibit 4A] and CDFW jurisdiction [Exhibit 4B] are enclosed. Photographs to document the topography, vegetative communities, and general widths of each of the waters are provided as Exhibit 5. A Soils Map is enclosed as Exhibit 6.

Pursuant to 33 CFR Part 325.9, the Study Area does not contain waters of the U.S.; therefore, no Corps jurisdiction is associated with the Project. An approved jurisdictional determination was issued by the Corps confirming that no Corps jurisdiction is present. This approved jurisdictional determination is attached as Appendix A.

Regional Board jurisdiction associated with Study Area totals 0.64 acre of waters the State, none of which consists of State wetlands. On site acreage totals are 0.53 acre and off site totals are 0.11 acre. A total of 11,051 linear feet of ephemeral stream is present consisting of 9,957 feet on site and 1,094 feet off site.

CDFW jurisdiction associated with the Study Area totals 0.75 acre, of which 0.06 acre consists of riparian stream and 0.69 acre consists of non-riparian stream. A total of 11,051 linear feet of ephemeral stream is present. This includes 151 linear feet of riparian stream and 10,900 linear feet of non-riparian stream and includes all areas within Regional Board jurisdiction. A total of 11,051 linear feet of ephemeral stream is present consisting of 9,957 feet on site and 1,094 feet off site.

## **I. METHODOLOGY**

Prior to beginning the field delineation, a color aerial photograph, a topographic base map of the property, the previously cited USGS topographic map, and a soils map were examined to determine the locations of potential areas of Corps, Regional Board, and CDFW jurisdiction. Suspected jurisdictional areas were field checked for evidence of stream activity and/or wetland vegetation, soils and hydrology. Where applicable, reference was made to the 2008 Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the

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<sup>2</sup> U.S. Environmental Protection Agency & Department of Defense. 2020. Federal Register / Vol. 85, No. 77 / Tuesday, April 21, 2020 / Rules and Regulations.

Western United States (OHWM Manual)<sup>3</sup> to identify the width of Corps jurisdiction and suspected federal wetland habitats on the site were evaluated using the methodology set forth in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual<sup>4</sup> (Wetland Manual) and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Supplement (Arid West Supplement).<sup>5</sup> Reference was also made to the 2019 State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (State Board Wetland Definition and Procedures) to identify suspected State wetland habitats.<sup>6</sup> While in the field the potential limits of jurisdiction were recorded with a sub-meter Trimble GPS device in conjunction with a color aerial photograph using visible landmarks.

The National Cooperative Soil Survey (NCSS) has mapped the following soil types as occurring in the general vicinity of the Project:

***Altamont clay, 25 to 50 percent slopes (AaF)***

Altamont soils are classified as fine, smectitic, thermic Aridic Haploxererts. The Altamont series consists of deep, well drained soils that formed in material weathered from fine-grained sandstone and shale. These soils are on gently sloping to very steep uplands.

***Auld clay, 2 to 8 percent slopes (AuC)***

The Auld series consists of deep, well drained soils formed in residuum from basic igneous rocks. The Auld soils are gently sloping to steep in upland areas at elevations of 300 to 2,700 feet.

***Auld clay, 8 to 15 percent slopes (AuD)***

Auld soils are on foothills and uplands and are well drained; medium to rapid runoff; slow permeability. Used mainly for growing small grains or pasture and to a limited extent citrus fruits, flowers, and truck crops where irrigated. Naturalized vegetation is mainly annual grasses and forbs.

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<sup>3</sup> U.S. Army Corps of Engineers. 2008. A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States

<sup>4</sup> Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

<sup>5</sup> U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

<sup>6</sup> State Water Resources Control Board. 2019. State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State.

***Bosanko clay, 2 to 8 percent slopes (BfC)***

The Bosanko series have gray, slightly acid, neutral, and moderately alkaline clay A horizons, brown, calcareous, sandy clay loam C horizons over weathered rock at a depth of about 30 inches.

***Buchenau silt loam, 2 to 8 percent slopes, eroded (BkC2)***

Buchenau are fine-loamy, mixed, active, thermic Typic Durixeralfs. The Buchenau series have very dark gray, moderately alkaline, calcareous medium textured A horizons and grayish brown, moderately alkaline and calcareous, medium to moderately fine B2 horizons that overlie a strongly lime cemented hardpan at moderate depth.

***Buren loam, deep, 2 to 8 percent slopes (BxC2)***

The Buren series consists of well drained slow to moderately slowly permeable soils. These soils are on gently to strongly sloping alluvial fans and terraces. They formed in alluvium derived mostly from basic igneous rocks and partly from other crystalline rocks.

***Cajalco fine sandy loam, 8 to 15 percent slopes, eroded (CaD2)***

The Cajalco soils are well drained, moderately permeable and occur on gently sloping to steep uplands in areas of deeply weathered, basic igneous rocks. Cajalco soils are classified as fine-loamy, mixed, active, thermic Mollic Haploxeralfs.

***Cajalco fine sandy loam, 15 to 35 percent slopes, eroded (CaF2)***

The Cajalco soils have yellowish brown, slightly acid, moderately coarse textured A horizons. The A horizons range from brown to dark brown to yellowish brown. The Cajalco soils occur on gently sloping to steep uplands in areas of deeply weathered, basic igneous rocks at elevations of less than 3,500 feet.

***Cajalco rocky fine sandy loam, 2 to 8 percent slopes, 15 to 50 percent slopes, eroded (CbF2)***

The Cajalco soils are well drained, moderately permeable and occur on gently sloping to steep uplands in areas of deeply weathered, basic igneous rocks. Average annual rainfall is 9 to 16 inches and the average annual temperature 62 degrees F.



***Escondido fine sandy loam, 2 to 8 percent slopes, eroded (EcC2)***

Escondido soils belong to the taxonomic class ‘Typic Haploxerepts’ and are coarse-loamy, mixed, superactive, and thermic. Typically, Escondido soils have dark brown slightly acid very fine sandy loam A horizons and neutral very fine sandy loam B2 horizons over hard metamorphic bedrock at depths of about 29 inches.

***Escondido fine sandy loam, 8 to 15 percent slopes, eroded (EcD2)***

Escondido soils are on gently rolling to hilly topography in foothills at elevations of 400 to 2,800 feet. Used for range, irrigated orchards and non-irrigated grain, grain hay and pasture. The native vegetation is oak-savanna and broadleaf chaparral. Mainly in southern California, in San Diego and Western Riverside counties.

***Friant fine sandy loam, 5 to 25 percent slopes, eroded (FwE2)***

The Friant series consists of shallow, well drained soils that formed in material weathered from mica schist, quartz schist and gneiss. Friant soils are on mountainous uplands and have slopes of 9 to 75 percent. Friant soils are loamy, mixed, superactive, thermic Lithic Haploxerolls.

***Garretson very fine sandy loam, 0 to 2 percent slopes (GaA)***

Garretson soils belong to a group of soils referred to as fine-loamy, mixed, active, nonacid, thermic Typic Xerorthents. The Garretson series is a member of the fine-loamy, mixed, nonacid, thermic family of Typic Xerorthents. Typically, Garretson soils have brown and yellowish brown, slightly acid, gravelly very fine sandy loam and gravelly loam A horizons and yellowish brown, brown and grayish brown, slightly acid and neutral, gravelly loam C horizons.

***Garretson very fine sandy loam, 2 to 8 percent slopes (GaC)***

The Garretson soils are on nearly level to strongly sloping fans and floodplains at elevations of 50 to 3,000 feet. They formed in medium textured alluvium, dominantly from sedimentary formations. Used for the production of deciduous fruit, citrus fruit, avocados, irrigated field crops, alfalfa, and for homesites. Naturalized vegetation in untilled areas is annual grasses and forbs. Native vegetation is chamise, scattered oak trees, and shrubs.

***Grangeville fine sandy loam, drained, 0 to 2 percent slopes (GtA)***

The Grangeville series consists of very deep, somewhat poorly drained soils that formed in moderate coarse textured alluvium dominantly from granitic rock sources. Grangeville soils are on alluvial fans and floodplains and have slopes ranging from 0 to 2 percent.

***Las Posas loam, 2 to 8 percent slopes (LaC)***

The Las Posas series consists of moderately deep, well drained soils that formed in material weathered from basic igneous rocks. Las Posas soils are on mountainous uplands and have slopes of 5 to 50 percent. Las Posas are fine, smectitic, thermic Typic Rhodoxeralfs.

***Las Posas loam, 8 to 15 percent slopes, eroded (LaD2)***

The La Posas soils are in uplands at elevations of 200 to 3,000 feet. Slopes are 5 to 50 percent. The soils formed in material weathered from basic igneous rocks. Some areas have up to 10 percent rock outcrop. Las Posas soils are distributed throughout the foothills of southern California and the Sierra Nevada. The soils are moderately extensive.

***Lodo gravelly loam, 15 to 50 percent slopes, eroded (LoF2)***

The Lodo series consists of shallow, somewhat excessively drained soils that formed in material weathered from hard shale and fine grained sandstone. Lodo soils are on uplands and have slopes of 5 to 75 percent.

***Lodo rocky loam, 8 to 25 percent slopes, eroded (LpE2)***

The Lodo series consists of shallow, somewhat excessively drained soils that formed in material weathered from hard shale and fine grained sandstone. Lodo soils are on uplands and have slopes of 5 to 75 percent. Rock fragments, mostly angular or subangular pebbles, make up 5 to 35 percent of the soil.

***Lodo rocky loam, 25 to 50 percent slopes, eroded (LpF2)***

Lodo soils are on mountainous uplands. Slopes are 5 to 75 percent. Elevations are 300 to 3,400 feet. The soils formed in material weathered from hard shale and hard fine grained sandstone. These soils are used principally for grazing, wildlife, and watershed. Native vegetation is buckwheat, scattered oak trees, Foothill pine, and chaparral. Naturalized vegetation is annual grasses and forbs.

***Monserate sandy loam, 0 to 5 percent slopes (Mmb)***

The Monserate series is a member of the fine-loamy, mixed, thermic family of Typic Durixeralfs. Typically, Monserate soils have brown and yellowish red, slightly acid, sandy loam A horizons, reddish brown, neutral, sandy clay loam B2t horizons underlain by silica-cemented duripans.

***Monserate sandy loam, 5 to 8 percent slopes, eroded (MmC2)***

The Monserate series is moderately well to well drained; slow to rapid runoff; permeability is moderately slow in the B2t horizon and very slow in the duripan. This soil is used principally for growing grain, grain hay or pasture, some citrus, and field and truck crops when irrigation water is available. Naturalized vegetation is mainly annual grasses and forbs, widely spaced native canyon oak, and shrubs on eroded slopes.

***Porterville clay, 0 to 8 percent slopes (PoC)***

The Porterville series consists of deep, well drained soils that formed in fine textured alluvial material from basic and metabasic igneous rock. Porterville soils are on fans and foothills and have slopes of 0 to 15 percent. Porterville soils are somewhat excessively drained; medium to rapid runoff; moderate permeability.

***Porterville clay, moderately deep, slightly saline-alkali, 0 to 5 percent slopes (PtB)***

Porterville soils are fine, smectitic, thermic Aridic Haploxererts found at the edges of the great valley and in intermountain valleys of southern California. The soils are of moderate extent. Used mainly for range pasture. Vegetation is annual grasses, burclover, herbs and widely spaced shrubs.

***Porterville gravelly clay, moderately deep, 2 to 5 percent slopes, eroded (PvD2)***

The Porterville series consists of deep, well drained soils that formed in fine textured alluvial material from basic and metabasic igneous rock. Porterville soils are on fans and foothills and have slopes of 0 to 15 percent. The mean annual precipitation is about 13 inches and the mean annual air temperature is about 62 degrees F.

***Vallecitos loam, 8 to 25 percent slopes, severely eroded (VaE3)***

The Vallecitos series consists of shallow, well drained soils formed from metamorphic bedrock. Vallecitos soils are on hills and have slopes of 9 to 75 percent. The mean annual precipitation is about 18 inches and the mean annual temperature is about 60 degrees F.

***Vallecitos loam, thick solum variant, 2 to 8 percent slopes, eroded (VeC2)***

Vallecitos soils are on 9 to 75 percent slopes at elevations of 100 to 3,000 feet on north slopes and up to 3,800 feet on south-facing slopes. They formed in material weathered from metamorphosed sandstone and shale dominantly of the Franciscan Formation. Vallecitos soils are distributed throughout the coastal ranges of California, mostly in the central and north-central portion of the state.

***Vista coarse sandy loam, 8 to 15 percent slopes, eroded (VsD2)***

The Vista series consists of moderately deep, well drained soils that formed in material weathered from decomposed granitic rocks. Vista soils are on hills and mountainous uplands and have slopes of 2 to 85 percent.

***Wyman fine sandy loam, 8 to 15 percent slopes, eroded (WxD2)***

The Wyman series consists of deep, well drained soils that formed in alluvium from andesitic and basaltic rocks. Wyman soil are on old stream terraces and old alluvial fans. Slopes are 0 to 15 percent. The soils formed in alluvium originating from andesitic and basaltic rocks. Wyman soils occur at elevations of 300 to 2,500 feet.

## II. JURISDICTION

### A. Army Corps of Engineers

Pursuant to Section 404 of the CWA, the Corps regulates the discharge of dredged and/or fill material into waters of the United States. The term "waters of the United States" is defined in Corps regulations at 33 CFR Part 328.3(a) as:

- (1) *All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;*
- (2) *All interstate waters including interstate wetlands;*
- (3) *All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect foreign commerce including any such waters:*
  - (i) *Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
  - (ii) *From which fish or shell fish are or could be taken and sold in interstate or foreign commerce; or*
  - (iii) *Which are used or could be used for industrial purpose by industries in interstate commerce...*
- (4) *All impoundments of waters otherwise defined as waters of the United States under the definition;*
- (5) *Tributaries of waters identified in paragraphs (a) (1)-(4) of this section;*
- (6) *The territorial seas;*
- (7) *Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)-(6) of this section.*
- (8) *Waters of the United States do not include prior converted cropland.<sup>7</sup> Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.*

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<sup>7</sup> The term "prior converted cropland" is defined in the Corps' Regulatory Guidance Letter 90-7 (dated September 26, 1990) as "wetlands which were both manipulated (drained or otherwise physically altered to remove excess water from the land) and cropped before 23 December 1985, to the extent that they no longer exhibit important wetland values. Specifically, prior converted cropland is inundated for no more than 14 consecutive days during the growing season...." [Emphasis added.]

*Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.*

In the absence of wetlands, the limits of Corps jurisdiction in non-tidal waters, such as intermittent streams, extend to the OHWM which is defined at 33 CFR 328.3(e) as:

*...that line on the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.*

**1. Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, et al.**

Pursuant to Article I, Section 8 of the U.S. Constitution, federal regulatory authority extends only to activities that affect interstate commerce. In the early 1980s the Corps interpreted the interstate commerce requirement in a manner that restricted Corps jurisdiction on isolated (intrastate) waters. On September 12, 1985, the U.S. Environmental Protection Agency (EPA) asserted that Corps jurisdiction extended to isolated waters that are used or could be used by migratory birds or endangered species, and the definition of “waters of the United States” in Corps regulations was modified as quoted above from 33 CFR 328.3(a).

On January 9, 2001, the Supreme Court of the United States issued a ruling on *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, et al.* (SWANCC). In this case the Court was asked whether use of an isolated, intrastate pond by migratory birds is a sufficient interstate commerce connection to bring the pond into federal jurisdiction of Section 404 of the CWA.

The written opinion notes that the court’s previous support of the Corps’ expansion of jurisdiction beyond navigable waters (*United States v. Riverside Bayview Homes, Inc.*) was for a wetland that abutted a navigable water and that the court did not express any opinion on the question of the authority of the Corps to regulate wetlands that are not adjacent to bodies of open water. The current opinion goes on to state:

*In order to rule for the respondents here, we would have to hold that the jurisdiction of the Corps extends to ponds that are not adjacent to open water. We conclude that the text of the statute will not allow this.*

Therefore, we believe that the court's opinion goes beyond the migratory bird issue and says that no isolated, intrastate water is subject to the provisions of Section 404(a) of the CWA (regardless of any interstate commerce connection). However, the Corps and EPA have issued a joint memorandum which states that they are interpreting the ruling to address only the migratory bird issue and leaving the other interstate commerce clause nexuses intact.

## 2. **Rapanos v. United States and Carabell v. United States**

On June 5, 2007, the EPA and Corps issued joint guidance that addresses the scope of jurisdiction pursuant to the CWA in light of the Supreme Court's decision in the consolidated cases *Rapanos v. United States* and *Carabell v. United States* ("Rapanos"). The chart below was provided in the joint EPA/Corps guidance.

For project sites that include waters other than Traditional Navigable Waters (TNWs) and/or their adjacent wetlands or Relatively Permanent Waters (RPWs) tributary to TNWs and/or their adjacent wetlands as set forth in the chart below, the Corps must apply the significant nexus standard.

For "isolated" waters or wetlands, the joint guidance also requires an evaluation by the Corps and EPA to determine whether other interstate commerce clause nexuses, not addressed in the SWANCC decision are associated with isolated features on project sites for which a jurisdictional determination is being sought from the Corps.

The agencies will assert jurisdiction over the following waters:

- Traditional navigable waters
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months)
- Wetlands that directly abut such tributaries

The agencies will decide jurisdiction over the following waters based on a fact-specific analysis to determine whether they have a significant nexus with a traditional navigable water:

- Non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary

The agencies generally will not assert jurisdiction over the following features:

- Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent or short duration flow)
- Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water

The agencies will apply the significant nexus standard as follows:

- A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters
- Significant nexus includes consideration of hydrologic and ecologic factors

### **3. Wetland Definition Pursuant to Section 404 of the Clean Water Act**

The term “wetlands” (a subset of “waters of the United States”) is defined at 33 CFR 328.3(b) as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support...a prevalence of vegetation typically adapted for life in saturated soil conditions.” In 1987 the Corps published a manual to guide its field personnel in determining jurisdictional wetland boundaries. The methodology set forth in the 1987 Wetland Delineation Manual and the Arid West Supplement generally require that, in order to be considered a wetland, the vegetation, soils, and hydrology of an area exhibit at least minimal hydric characteristics. While the manual and Supplement provide great detail in methodology and allow for varying special conditions, a wetland should normally meet each of the following three criteria:

- more than 50 percent of the dominant plant species at the site must be typical of wetlands (i.e., rated as facultative or wetter in the Arid West 2016 Regional Wetland Plant List<sup>89</sup>);
- soils must exhibit physical and/or chemical characteristics indicative of permanent or periodic saturation (e.g., a gleyed color, or mottles with a matrix of low chroma indicating a relatively consistent fluctuation between aerobic and anaerobic conditions); and
- Whereas the 1987 Manual requires that hydrologic characteristics indicate that the ground is saturated to within 12 inches of the surface for at least five percent of the growing season

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<sup>8</sup> Lichvar, R.W., D.L. Banks, W.N. Kirchner, and N.C. Melvin. 2016. Arid West 2016 Regional Wetland Plant List. Phytoneuron 2016-30: 1-17. Published 28 April 2016.

<sup>9</sup> Note the Corps also publishes a National List of Plant Species that Occur in Wetlands (Lichvar, R.W., D.L. Banks, W.N. Kirchner, and N.C. Melvin. 2016. The National Wetland Plant List: 2016 wetland ratings. Phytoneuron 2016-30: 1-17. Published 28 April 2016.); however, the Regional Wetland Plant List should be used for wetland delineations within the Arid West Region.



during a normal rainfall year, the Arid West Supplement does not include a quantitative criteria with the exception for areas with “problematic hydrophytic vegetation”, which require a minimum of 14 days of ponding to be considered a wetland.

## **B. Regional Water Quality Control Board**

The State Water Resource Control Board and each of its nine Regional Boards regulate the discharge of waste (dredged or fill material) into waters of the United States<sup>10</sup> and waters of the State. Waters of the United States are defined above in Section II.A and waters of the State are defined as “any surface water or groundwater, including saline waters, within the boundaries of the state” (California Water Code 13050[e]).

Section 401 of the CWA requires certification for any federal permit or license authorizing impacts to waters of the U.S. (i.e., waters that are within federal jurisdiction), such as Section 404 of the CWA and Section 10 of the Safe Rivers and Harbors Act, to ensure that the impacts do not violate state water quality standards. When a project could impact waters outside of federal jurisdiction, the Regional Board has the authority under the Porter-Cologne Water Quality Control Act to issue Waste Discharge Requirements (WDRs) to ensure that impacts do not violate state water quality standards. Clean Water Act Section 401 Water Quality Certifications, WDRs, and waivers of WDRs are also referred to as orders or permits.

### **1. State Wetland Definition**

The State Board Wetland Definition and Procedures define an area as wetland as follows: *An area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area’s vegetation is dominated by hydrophytes or the area lacks vegetation.*

The following wetlands are waters of the State:

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<sup>10</sup> Therefore, wetlands that meet the current definition, or any historic definition, of waters of the U.S. are waters of the state. In 2000, the State Water Resources Control Board determined that all waters of the U.S. are also waters of the state by regulation, prior to any regulatory or judicial limitations on the federal definition of waters of the U.S. (California Code of Regulations title 23, section 3831(w)). This regulation has remained in effect despite subsequent changes to the federal definition. Therefore, waters of the state includes features that have been determined by the U.S. Environmental Protection Agency (U.S. EPA) or the U.S. Army Corps of Engineers (Corps) to be “waters of the U.S.” in an approved jurisdictional determination; “waters of the U.S.” identified in an aquatic resource report verified by the Corps upon which a permitting decision was based; and features that are consistent with any current or historic final judicial interpretation of “waters of the U.S.” or any current or historic federal regulation defining “waters of the U.S.” under the federal Clean Water Act.

1. *Natural wetlands;*
2. *Wetlands created by modification of a surface water of the state;<sup>11</sup> and*
3. *Artificial wetlands<sup>12</sup> that meet any of the following criteria:*
  - a. *Approved by an agency as compensatory mitigation for impacts to other waters of the state, except where the approving agency explicitly identifies the mitigation as being of limited duration;*
  - b. *Specifically identified in a water quality control plan as a wetland or other water of the state;*
  - c. *Resulted from historic human activity, is not subject to ongoing operation and maintenance, and has become a relatively permanent part of the natural landscape; or*
  - d. *Greater than or equal to one acre in size, unless the artificial wetland was constructed, and is currently used and maintained, primarily for one or more of the following purposes (i.e., the following artificial wetlands are not waters of the state unless they also satisfy the criteria set forth in 2, 3a, or 3b):*
    - i. *Industrial or municipal wastewater treatment or disposal,*
    - ii. *Settling of sediment,*
    - iii. *Detention, retention, infiltration, or treatment of stormwater runoff and other pollutants or runoff subject to regulation under a municipal, construction, or industrial stormwater permitting program,*
    - iv. *Treatment of surface waters,*
    - v. *Agricultural crop irrigation or stock watering,*
    - vi. *Fire suppression,*
    - vii. *Industrial processing or cooling,*
    - viii. *Active surface mining – even if the site is managed for interim wetlands functions and values,*
    - ix. *Log storage,*
    - x. *Treatment, storage, or distribution of recycled water, or*
    - xi. *Maximizing groundwater recharge (this does not include wetlands that have incidental groundwater recharge benefits); or*
    - xii. *Fields flooded for rice growing.<sup>13</sup>*

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<sup>11</sup> “Created by modification of a surface water of the state” means that the wetland that is being evaluated was created by modifying an area that was a surface water of the state at the time of such modification. It does not include a wetland that is created in a location where a water of the state had existed historically, but had already been completely eliminated at some time prior to the creation of the wetland. The wetland being evaluated does not become a water of the state due solely to a diversion of water from a different water of the state.

<sup>12</sup> Artificial wetlands are wetlands that result from human activity.

<sup>13</sup> Fields used for the cultivation of rice (including wild rice) that have not been abandoned due to five consecutive years of non-use for the cultivation of rice (including wild rice) that are determined to be a water of the state in

*All artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in 2, 3.a, 3.b, or 3.c are not waters of the state. If an aquatic feature meets the wetland definition, the burden is on the applicant to demonstrate that the wetland is not a water of the state.*

**C. California Department of Fish and Wildlife**

Pursuant to Division 2, Chapter 6, Sections 1600-1617 of the California Fish and Game Code, the CDFW regulates all diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake, which supports fish or wildlife.

CDFW defines a stream (including creeks and rivers) as "a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." CDFW's definition of "lake" includes "natural lakes or man-made reservoirs." CDFW also defines a stream as "a body of water that flows, or has flowed, over a given course during the historic hydrologic regime, and where the width of its course can reasonably be identified by physical or biological indicators."

It is important to note that the Fish and Game Code defines fish and wildlife to include: all wild animals, birds, plants, fish, amphibians, invertebrates, reptiles, and related ecological communities including the habitat upon which they depend for continued viability (FGC Division 5, Chapter 1, section 45 and Division 2, Chapter 1 section 711.2(a) respectively). Furthermore, Division 2, Chapter 5, Article 6, Section 1600 et seq. of the California Fish and Game Code does not limit jurisdiction to areas defined by specific flow events, seasonal changes in water flow, or presence/absence of vegetation types or communities.

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accordance with these Procedures shall not have beneficial use designations applied to them through the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, except as otherwise required by federal law for fields that are considered to be waters of the United States. Further, agricultural inputs legally applied to fields used for the cultivation of rice (including wild rice) shall not constitute a discharge of waste to a water of the state. Agricultural inputs that migrate to a surface water or groundwater may be considered a discharge of waste and are subject to waste discharge requirements or waivers of such requirements pursuant to the Water Board's authority to issue or waive waste discharge requirements or take other actions as applicable.

### III. RESULTS

#### A. Drainage Descriptions

Potential jurisdictional features analyzed as part of the field investigation include ten ephemeral drainage features that occur within the Study Area, referred to herein as Drainages A, A-1, B, C, D, E, F, G, H, and I.

These features extend across the Study Area in a general southerly direction (except for Drainages B and H, which drain in a southwesterly direction). With the exception of Drainages A, A-1, H, and I, the majority of these drainages originate onsite and convey surface runoff and/or storm water runoff from the adjacent hillsides. The drainages occur on vacant agricultural land with a majority of the site being disked on a regular basis. Elevations range from approximately 1,420 to 1,560 feet above mean sea level. Off-site flows are ultimately conveyed east below SR 79, southwest to Warm Springs Creek, and onward to Murrieta Creek.

All features are further described below, followed by a summary of Regional Board and CDFW jurisdiction. Site photographs are provided as Exhibit 5.

#### **Drainage A**

Drainage A is an ephemeral blue-line drainage that comprises approximately 1,407 linear feet within the Study Area. No wetlands are associated with this feature.

Drainage A enters the southwestern corner of the Study Area via road runoff and nuisance flows from the surrounding areas. Drainage A meanders in a general easterly/southeasterly direction for a collective 884 linear feet onsite and 523 linear feet offsite, before exiting the Study Area southeast towards Winchester Road/SR 79. Flows from Drainage A are ultimately conveyed into the storm drain system west of SR 79, which drains southwest to Warm Springs Creek, and onward to Murrieta Creek. The channel bottom supports a sandy loam substrate and was completely dry during our field delineation despite recent rainfall events.

Drainage A is dominated by upland weedy species common throughout the Project, including black mustard (*Brassica nigra*), common barley (*Hordeum vulgare*), tocalote (*Centaurea melitensis*), ripgut brome (*Bromus diandrus*), golden crown beard (*Verbesina enceliodes*) smooth cat's ear (*Hypochaeris glabra*), Russian thistle (*Salsola ssp.*), doveweed (*Croton setiger*), and wild oat (*Avena fatua*). The westerly drainage reach contains a single arroyo willow (*Salix lasiolepis*), one palo verde (*Parkinsonia aculeata*), and a few clumps of mulefat (*Baccharis salicifolia*).

### **Drainage A-1**

Drainage A-1 is an ephemeral drainage that conveys road runoff and nuisance flows through a pipe culvert south of Keller Road in the offsite portion of the Project. This feature extends across the offsite portion of the Project area in a southerly direction for approximately 331 linear feet [24 feet on site and 307 feet off site] before leaving the Study Area and continuing its flow path offsite and converging with Drainage A downstream. Drainage A-1 contains non-native upland grasses and weeds and was completely dry during our field delineation. No wetlands or riparian areas are associated with this feature.

### **Drainage B**

Drainage B is an ephemeral drainage that traverses the northwestern portion of the Study Area in a general southwesterly direction for approximately 1,544 linear feet (1,528 linear feet on site and 16 feet off site) before entering the storm drain system at a small pipe culvert under Pourroy Road. This feature originates in the northwestern portion of the Project and conveys stormwater runoff from the adjacent hillsides. This feature is somewhat erosional in portions and was completely dry during our field delineation. No wetlands or riparian areas are associated with this feature. Drainage B is dominated by black mustard, common barley, sparse cocklebur (*Xanthium spinosum*), ripgut brome, and vinegar weed (*Trichostema lanceolatum*).

### **Drainage C**

Drainage C is an ephemeral drainage that extends across the western portion of the site in a southerly direction for approximately 1,725 linear feet before dissipating on site as sheet flow towards a roadside pipe culvert at the southern Project boundary. This feature originates on site and conveys stormwater runoff from the adjacent hillsides. This feature is somewhat erosional in portions and was completely dry during our field delineation. No wetlands or riparian areas are associated with this feature. Drainage C is dominated by black mustard, common barley, sparse cocklebur (*Xanthium spinosum*), ripgut brome, and vinegar weed (*Trichostema lanceolatum*).

### **Drainage D**

Drainage D is an ephemeral drainage that extends across the west-central portion of the site in a southerly direction for approximately 1,205 linear feet before dissipating on site as sheet flow towards a roadside pipe culvert at the southern project boundary. This feature originates on site and conveys stormwater runoff from the adjacent hillsides. This feature is somewhat erosional in

portions and was completely dry during our field delineation. No wetlands or riparian areas are associated with this feature.

### **Drainage E**

Drainage E is an ephemeral drainage that extends across in central/east-central portion of the site in a southeasterly direction for approximately 2,723 linear feet before dissipating on site as sheet flow towards a culvert along the eastern project boundary. This feature originates on site and conveys stormwater runoff from the adjacent hillsides. This feature is somewhat erosional in portions and completely dry during our field delineation. No wetlands or riparian areas are associated with this feature. Drainage E is dominated by black mustard, common barley, sparse cocklebur (*Xanthium spinosum*), riggut brome, and vinegar weed (*Trichostema lanceolatum*).

### **Drainage F**

Drainage F is an ephemeral drainage that extends across the eastern portion of the site in a southerly direction for approximately 891 linear feet before dissipating on site as sheet flow. This feature originates on site and conveys stormwater runoff from the adjacent hillsides. This feature is somewhat erosional in portions and was completely dry during our field delineation. No wetlands or riparian areas are associated with this feature. Drainage F is dominated by black mustard, common barley, sparse cocklebur (*Xanthium spinosum*), riggut brome, and vinegar weed (*Trichostema lanceolatum*).

### **Drainage G**

Drainage G is an ephemeral drainage that enters the site from the northeast and extends in a southerly direction for approximately 1,009 linear feet (977 feet on site and 32 feet off site) before exiting the eastern Project boundary adjacent to SR 79. At this point, flows enter a concrete culvert beneath SR 79 and continue offsite. This feature conveys stormwater runoff from the adjacent hillsides and is somewhat erosional in portions. Drainage G was completely dry during our field delineation and no wetlands are associated with this feature. Drainage G is dominated by similar vegetation with the addition of buckwheat (*Eriogonum* spp.) along the banks.

### **Drainage H**

Drainage H is an ephemeral drainage feature associated with the eastern portion of the offsite Project area along Keller Road. This feature totals approximately 139 linear feet and is completely unvegetated with the exception of planted Peruvian pepper trees (*Schinus molle*)

overhanging the upper banks. Drainage H was completely dry during our field delineation and no wetlands or riparian areas are associated with this feature.

### **Drainage I**

Drainage I is an ephemeral drainage feature located on the northwest side of Pourroy Road in the offsite Project area. This feature conveys road runoff and totals approximately 77 linear feet. Drainage I is unvegetated and was completely dry during our field delineation. No wetlands or riparian areas are associated with this feature.

### **B. Corps Jurisdiction**

Pursuant to 33 CFR Part 325.9, the Study Area does not contain waters of the U.S.; therefore, no Corps jurisdiction is associated with the Project.

On April 21, 2020, the EPA and the Corps (collectively, the “agencies”) published the *Navigable Waters Protection Rule*<sup>14</sup> (NWPR). The NWPR became effective in 49 states and all U.S. territories on June 22, 2020. Pursuant to the NWPR, ephemeral features, including ephemeral streams, swales, gullies, rills, and pools are not considered waters of the U.S. regardless of the presence or absence of an OHWM. Tributaries must satisfy the flow conditions of the definition described in 33 U.S.C. 1251 et seq. and its implementing regulations (33 CFR Part 328.3).

The Project supports several ephemeral drainage features (Drainages A – I) that flow only in direct response to precipitation (e.g., rain). Pursuant to the NWPR, ephemeral features are not subject to Corps jurisdiction pursuant to Section 404 of the CWA. Therefore, on April 6, 2021, the Corps issued an AJD for the Project in concurrence with the NWPR.

The AJD is valid for a period of five years and is provided as Appendix A<sup>15</sup>. A map depicting the AJD review area is provided as Exhibit 4A. A summary of current Corps regulations is provided in Section II above<sup>16</sup>.

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<sup>14</sup> U.S. Environmental Protection Agency & Department of Defense. 2020. Federal Register / Vol. 85, No. 77 / Tuesday, April 21, 2020 / Rules and Regulations.

<sup>15</sup> On August 30, 2021, the U.S. District Court for the District of Arizona issued an order vacating and remanding the NWPR in the case of *Pascua Yaqui Tribe v. U.S. Environmental Protection Agency*. In light of this order, the agencies have halted implementation of the NWPR and are interpreting “waters of the United States” consistent with the pre-2015 regulatory regime until further notice. Any AJDs issued prior to the effective date of the court decision remain valid for a period of five years regardless of current regulations.

<sup>16</sup> Please note, the AJD issued for the Project was issued under the NWPR and precludes current Corps regulations.

**C. Regional Water Quality Control Board Jurisdiction**

Regional Board jurisdiction associated with Project totals 0.64 acre of waters the State, none of which consists of State wetlands. On site acreage totals are 0.53 acre and off site totals are 0.11 acre. A total of 11,051 linear feet of ephemeral stream is present consisting of 9,957 feet on site and 1,094 feet off site.

Regional Board jurisdiction is limited to ten ephemeral drainage features (Drainages A, A-1, B, C, D, E, F, G, H, and I) that convey surface water only in direct response to precipitation (e.g., rain). These features exhibit flow sign indicators as evidenced by changes in soil characteristics and incised channel banks. On April 6, 2021, the Corps issued an AJD for the Project in concurrence with the NWPR. Pursuant to the NWPR, ephemeral features are not subject to Corps jurisdiction pursuant to Section 404 of the CWA. Since ephemeral features are not subject to Corps jurisdiction pursuant to Section 404 of the CWA, these features are also not subject to Regional Board jurisdiction pursuant to Section 401 of the CWA. The AJD issued for the Project is valid for a period of five years and is provided as Appendix A<sup>17</sup>. However, since these features convey surface flow with the potential to support beneficial uses, they are considered to be waters of the State that would be regulated by the Regional Board pursuant to Section 13260 of the California Water Code (CWC)/the Porter-Cologne Act.

Table 1 below summarizes Regional Board jurisdictional waters associated with the Project. Drainage descriptions are provided above. The boundaries of Regional Board jurisdiction are depicted on the enclosed jurisdictional delineation map [Exhibit 4A].

**Table 1: Summary of Regional Board Jurisdiction – Waters of the State**

<b>Drainage Name</b>	<b>Regional Board Non-Wetland Waters of the State (acres)</b>	<b>Regional Board State Wetlands (acres)</b>	<b>Total Regional Board Jurisdiction (acres)</b>	<b>Length (linear feet)</b>
Drainage A	0.12	0.00	0.12	1,407
Drainage A-1	0.05	0.00	0.05	331
Drainage B	0.04	0.00	0.04	1,544
Drainage C	0.10	0.00	0.10	1,725
Drainage D	0.08	0.00	0.08	1,205
Drainage E	0.15	0.00	0.15	2,723
Drainage F	0.03	0.00	0.03	891

<sup>17</sup> On August 30, 2021, the U.S. District Court for the District of Arizona issued an order vacating and remanding the NWPR in the case of *Pascua Yaqui Tribe v. U.S. Environmental Protection Agency*. In light of this order, the agencies have halted implementation of the NWPR and are interpreting “waters of the United States” consistent with the pre-2015 regulatory regime until further notice. Any AJDs issued prior to the effective date of the court decision remain valid for a period of five years regardless of current regulations.



Drainage G	0.05	0.00	0.05	1,009
Drainage H	0.01	0.00	0.01	139
Drainage I	0.004	0.00	0.004	77
<b>Total*</b>	<b>0.64 [Rounded]</b>	<b>0</b>	<b>0.64 [Rounded]</b>	<b>11,051</b>

\*Sum of individual parts may not equal sum total due to rounding error.

#### **D. CDFW Jurisdiction**

CDFW jurisdiction associated with the Study Area totals 0.75 acre, of which 0.06 acre consists of riparian stream and 0.69 acre consists of non-riparian stream. A total of 11,051 linear feet of ephemeral stream is present. This includes 151 linear feet of riparian stream and 10,900 linear feet of non-riparian stream and includes all areas within Regional Board jurisdiction. A total of 11,051 linear feet of ephemeral stream is present consisting of 9,957 feet on site and 1,094 feet off site.

CDFW jurisdiction at the Project includes Drainages A, A-1, B, C, D, E, F, G, H, and I. These features exhibit defined stream flow indicators as evidenced by discernible channel banks, drainage patterns, and changes in soil characteristics. Since these features exhibit a discernable stream course, they are subject to regulation by the CDFW under Section 1602 of the Fish and Game Code.

The Project also contains topographic features, including swales and/or erosional areas that lack a defined stream course and do not convey adequate flow sign or a discernable channel banks. As these areas lack a discernable stream course, they are not subject to regulation by the CDFW under Section 1602 of the Fish and Game Code.

Table 2 below summarizes CDFW jurisdictional waters associated with the Project. Drainage descriptions are provided above. The boundaries of CDFW jurisdiction are depicted on the enclosed jurisdictional delineation map [Exhibit 4B].

**Table 2: Summary of CDFW Jurisdiction**

<b>Drainage Name</b>	<b>CDFW Non-Riparian Stream (acres)</b>	<b>CDFW Riparian Stream (acres)</b>	<b>Total CDFW Jurisdiction (acres)</b>	<b>Length (linear feet)</b>
Drainage A	0.15	0.06	0.21	1,407
Drainage A-1	0.04	0.00	0.04	331
Drainage B	0.04	0.00	0.04	1,544
Drainage C	0.10	0.00	0.10	1,725
Drainage D	0.09	0.00	0.09	1,205
Drainage E	0.17	0.00	0.17	2,723

Dan Boyd  
D.R. Horton, Inc.  
March 18, 2022  
Page 22

Drainage F	0.03	0.00	0.03	891
Drainage G	0.05	0.00	0.05	1,009
Drainage H	0.01	0.00	0.01	139
Drainage I	0.004	0.00	0.004	77
<b>Total</b>	<b>0.69 [Rounded]</b>	<b>0.06</b>	<b>0.75 [Rounded]</b>	<b>11,051</b>

\*Sum of individual parts may not equal sum total due to rounding error.

If you have any questions about this letter report, please contact me at (949) 340-3851 or at [mrasnick@wetlandpermitting.com](mailto:mrasnick@wetlandpermitting.com)

Sincerely,

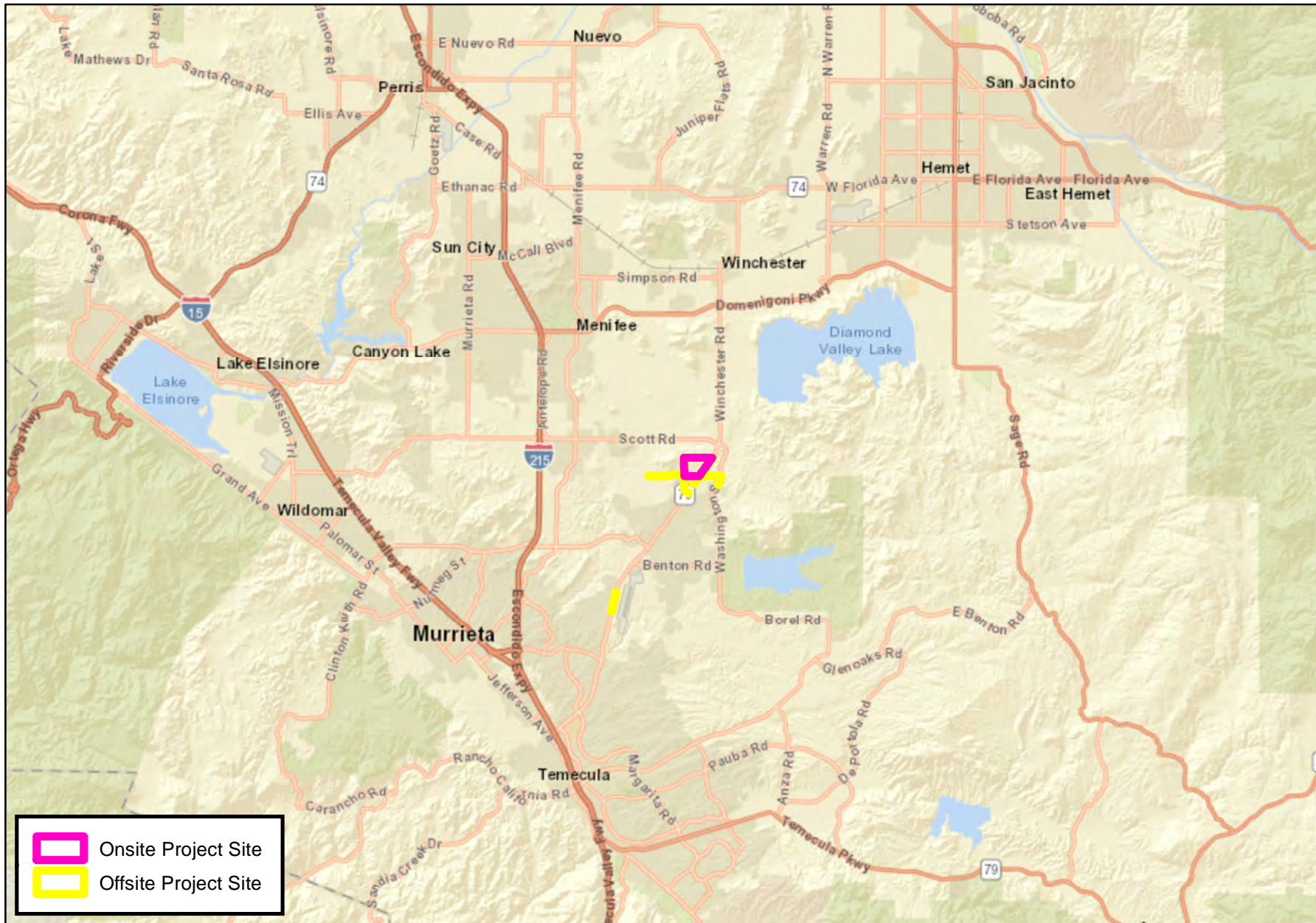
GLENN LUKOS ASSOCIATES, INC.



Martin A. Rasnick  
Principal/Senior Regulatory Specialist

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Source: ESRI World Street Map



 Onsite Project Site  
 Offsite Project Site

# KELLER CROSSING PROJECT

Regional Map

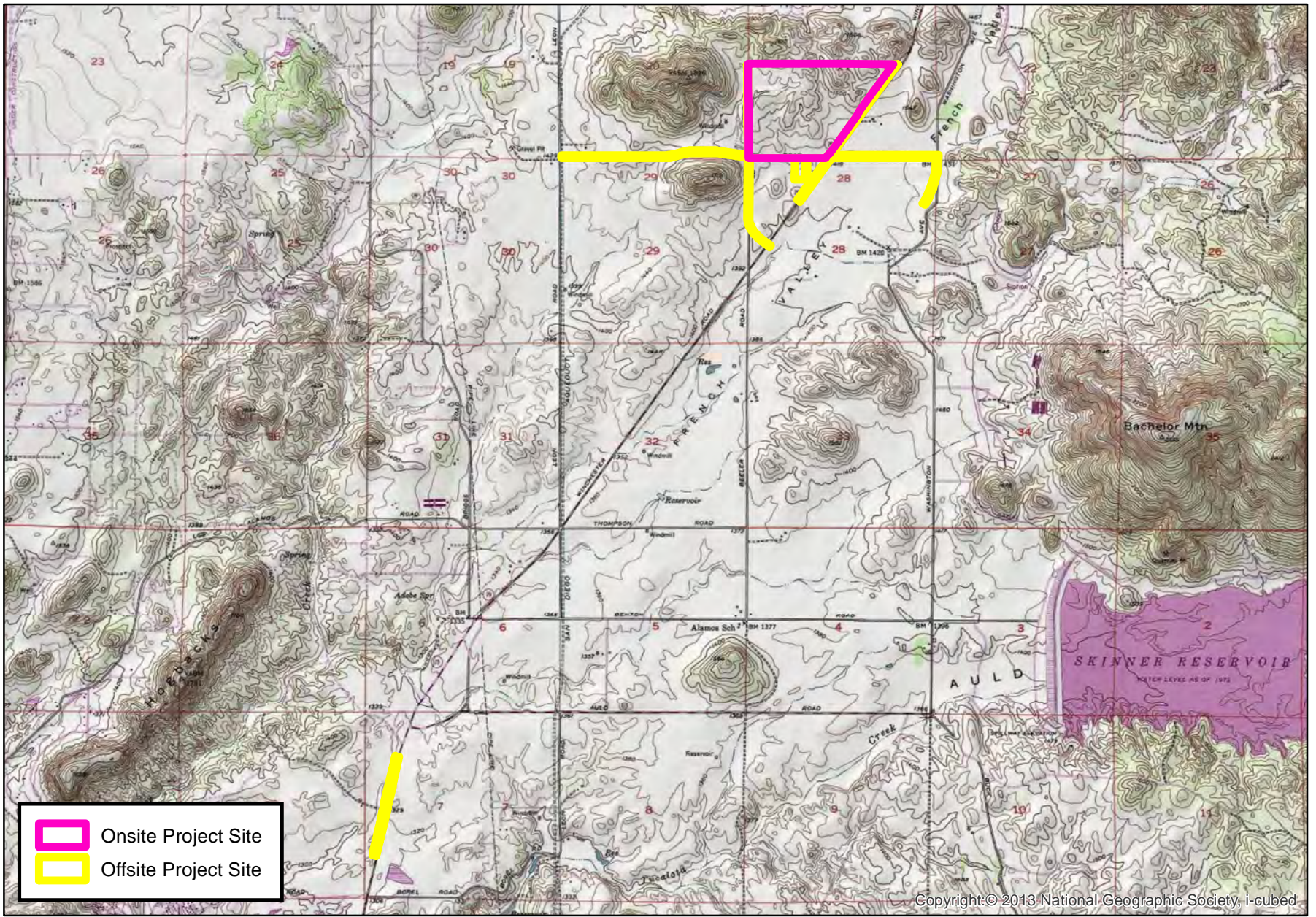
GLENN LUKOS ASSOCIATES



Exhibit 1



Adapted from USGS Bachelor Mountain, Murrieta and Winchester CA quadrangles



Copyright: © 2013 National Geographic Society, i-cubed

# KELLER CROSSING PROJECT

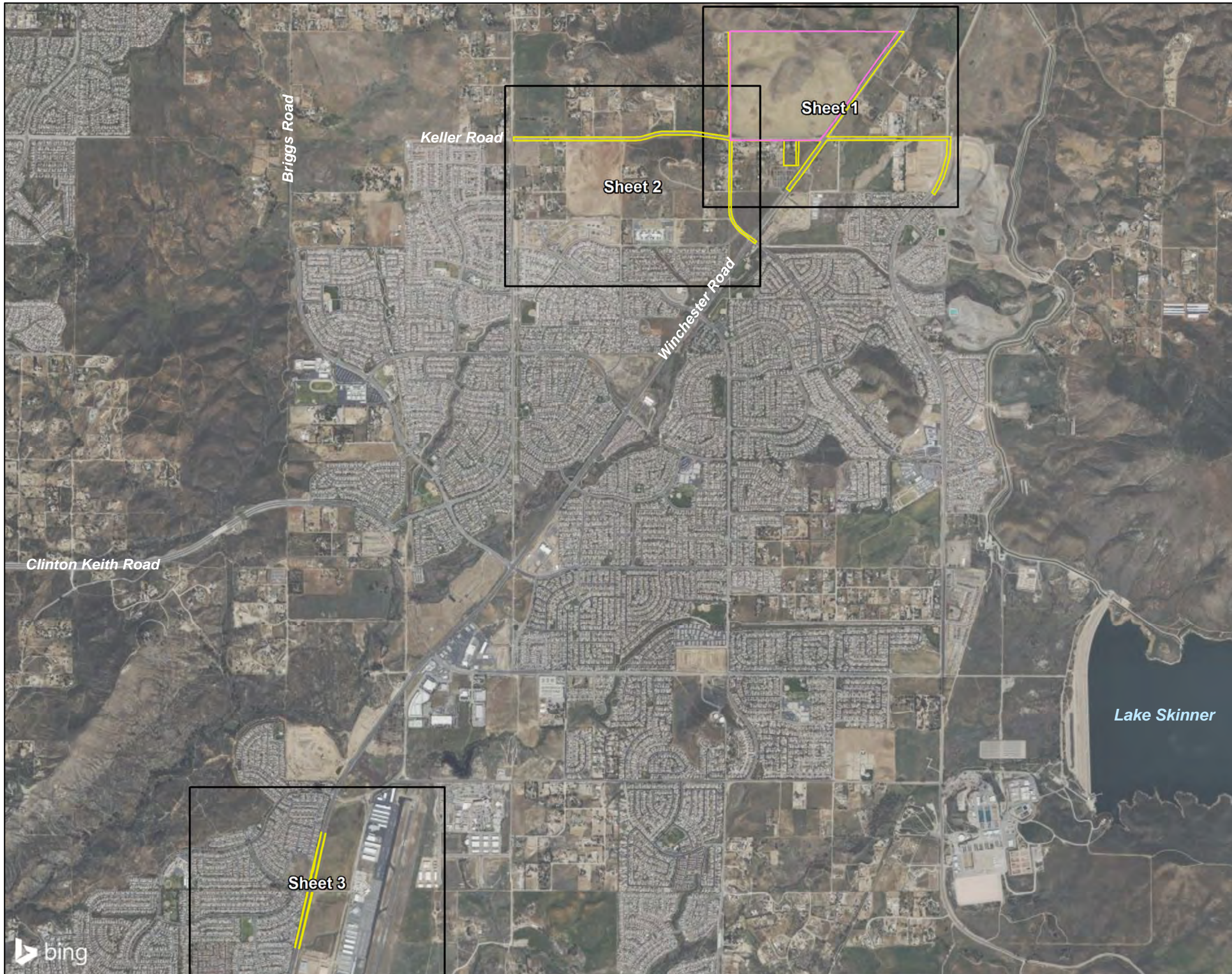
Vicinity Map

GLENN LUKOS ASSOCIATES

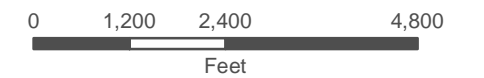


Exhibit 2





- Onsite Project Site
- Offsite Project Site



1 inch = 2,400 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

## KELLER CROSSING PROJECT

Aerial Map

GLENN LUKOS ASSOCIATES





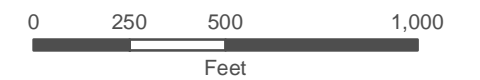
Exhibit 3 - Key Map







-  Onsite Project Site
-  Offsite Project Site



1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
Projection: Lambert Conformal Conic  
Datum: NAD83  
Map Prepared by: K. Kartunen, GLA  
Date Prepared: July 20, 2022

## KELLER CROSSING PROJECT

Aerial Map

GLENN LUKOS ASSOCIATES



Exhibit 3 - Sheet 1





Keller Road

Leon Road

Winchester Road

- Onsite Project Site
- Offsite Project Site



0 250 500 1,000

Feet

1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

## KELLER CROSSING PROJECT

Aerial Map

GLENN LUKOS ASSOCIATES

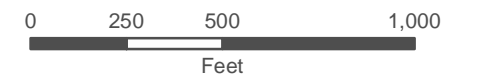


Exhibit 3 - Sheet 2





 Offsite Project Site



1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
Projection: Lambert Conformal Conic  
Datum: NAD83  
Map Prepared by: K. Kartunen, GLA  
Date Prepared: July 20, 2022

## KELLER CROSSING PROJECT

Aerial Map

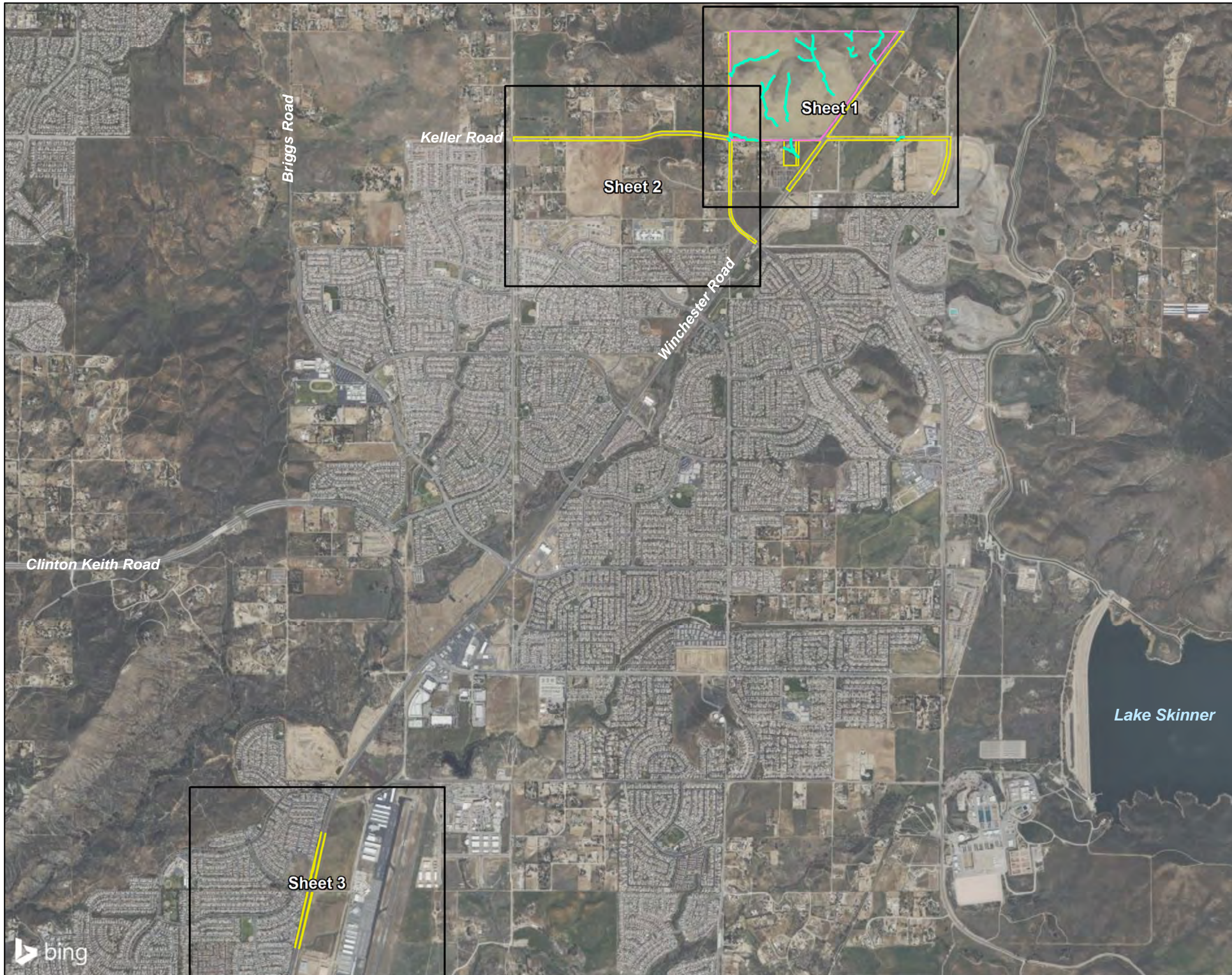
GLENN LUKOS ASSOCIATES



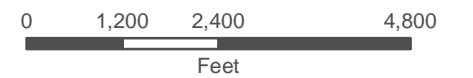
Exhibit 3 - Sheet 3







- Onsite Project Site
- Offsite Project Site
- Non-Wetland Waters of the State



1 inch = 2,400 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

## KELLER CROSSING PROJECT

RWQCB Jurisdictional Delineation Map

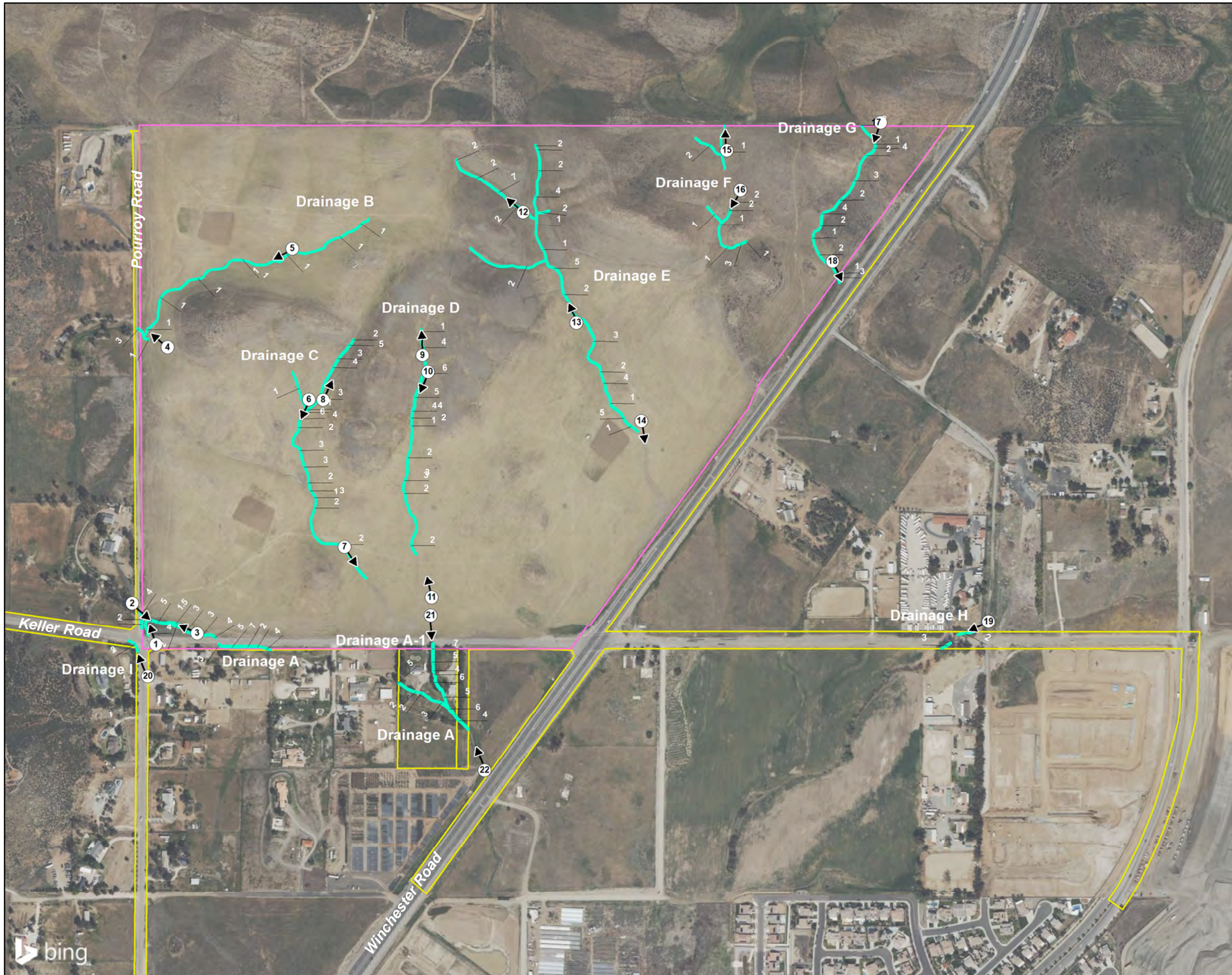
GLENN LUKOS ASSOCIATES



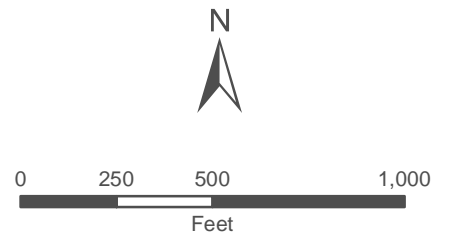
Exhibit 4A - Key Map







- Onsite Project Site
- Offsite Project Site
- Non-Wetland Waters of the State
- Width of Feature in Feet
- Photo Location



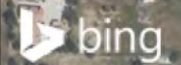
1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

**KELLER CROSSING PROJECT**  
 RWQCB Jurisdictional Delineation Map

GLENN LUKOS ASSOCIATES

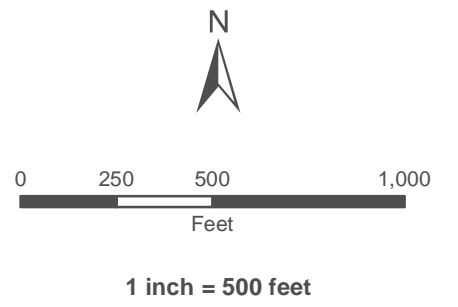
Exhibit 4A - Sheet 1







- Onsite Project Site
- Offsite Project Site
- Non-Wetland Waters of the State
- Width of Feature in Feet
- Photo Location



Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

**KELLER CROSSING PROJECT**  
 RWQCB Jurisdictional Delineation Map

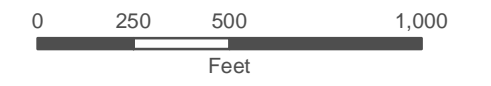
GLENN LUKOS ASSOCIATES

Exhibit 4A - Sheet 2





 Offsite Project Site



1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
Projection: Lambert Conformal Conic  
Datum: NAD83  
Map Prepared by: K. Kartunen, GLA  
Date Prepared: July 20, 2022

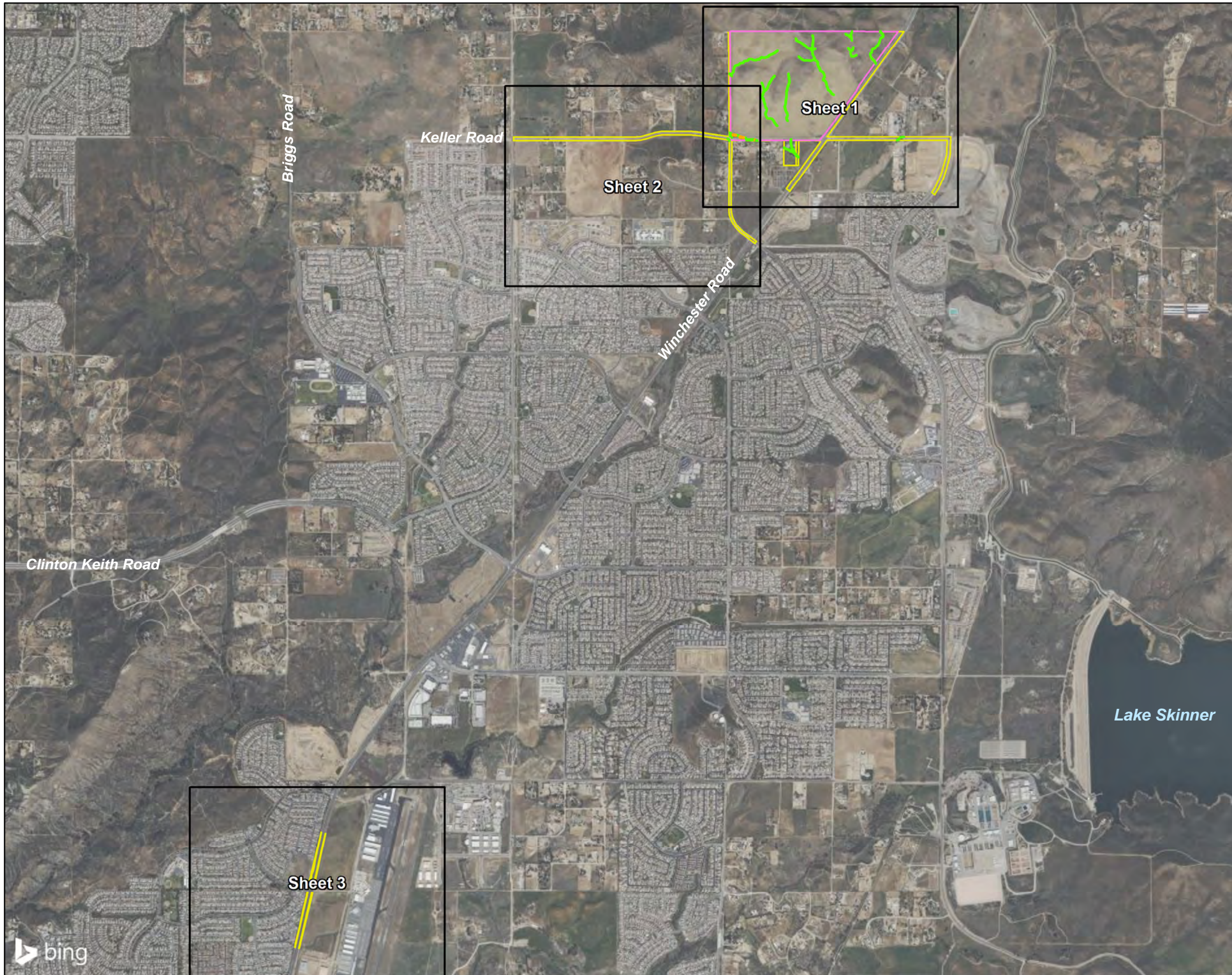
**KELLER CROSSING PROJECT**  
RWQCB Jurisdictional Delineation Map

GLENN LUKOS ASSOCIATES 

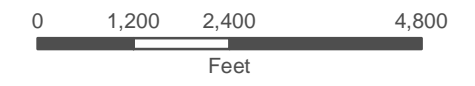
Exhibit 4A - Sheet 3







- Onsite Project Site
- Offsite Project Site
- CDFW Non-Riparian Stream
- CDFW Riparian



1 inch = 2,400 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

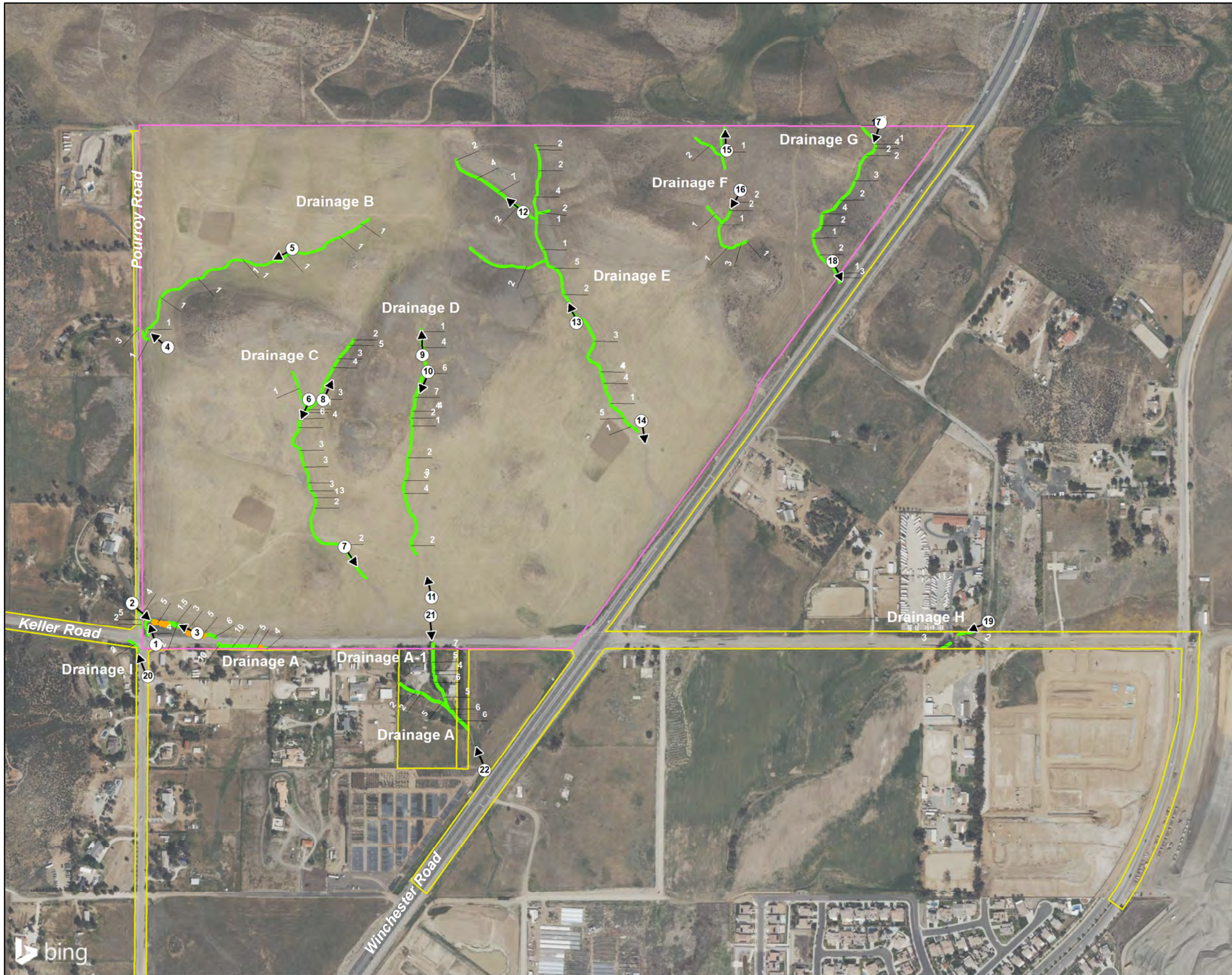
**KELLER CROSSING PROJECT**  
 CDFW Jurisdictional Delineation Map

GLENN LUKOS ASSOCIATES

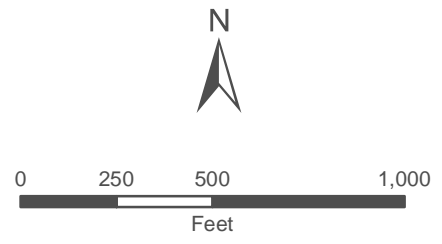
Exhibit 4B - Key Map







- Onsite Project Site
- Offsite Project Site
- CDFW Non-Riparian Stream
- CDFW Riparian
- Width of Non-Riparian Stream in Feet
- Photo Location



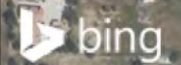
1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

**KELLER CROSSING PROJECT**  
 CDFW Jurisdictional Delineation Map

GLENN LUKOS ASSOCIATES

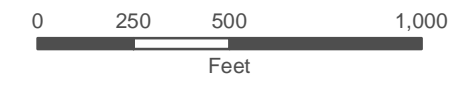
Exhibit 4B - Sheet 1







- Onsite Project Site
- Offsite Project Site
- CDFW Non-Riparian Stream
- CDFW Riparian
- Width of Non-Riparian Stream in Feet
- Photo Location



1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022



**KELLER CROSSING PROJECT**  
 CDFW Jurisdictional Delineation Map

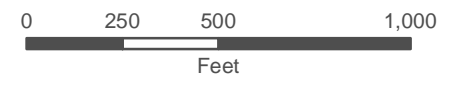
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Exhibit 4B - Sheet 2





-  Offsite Project Site
-  Offsite Project Footprint



1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

**KELLER CROSSING PROJECT**  
 CDFW Impact Map

GLENN LUKOS ASSOCIATES 

Exhibit 4B - Sheet 3







Photograph 1: 02/03-21. Drainage A side tributary looking upstream



Photograph 2: 02/03/21. Start of Drainage A looking downstream from edge of Pourroy Road.



Photograph 3: 02/03/21. Drainage A looking upstream at riparian habitat.



Photograph 4: 02/03/21. Looking at downstream extent of Drainage B towards terminus at culvert.







Photograph 5: 02/03/21. Middle portion of Drainage B looking downstream.



Photograph 6: 02/03/21. Upper portion of Drainage C looking upstream.



Photograph 7: 02/03/21. Lower portion of Drainage C looking downstream,



Photograph 8: 02/03/21. Upper portion of Drainage C looking downstream.







Photograph 9: 02/03/21. Drainage D looking upstream towards start of drainage.



Photograph 10: 02/03/21. Middle portion of Drainage D looking downstream.



Photograph 11: 02/03/21. View of Drainage D terminus where flow sign is absent.



Photograph 12: 02/03/21. Upper portion of Drainage E looking upstream.







Photograph 13: 02/03/21. Middle segment of Drainage E.



Photograph 14: 02/803/21. View of Drainage E terminus where flow sign dissipates as sheet flow.



Photograph 15: 02/03/21. Start of Drainage F looking upstream towards Project boundary fence.



Photograph 16: 02/03/21. View of Drainage F looking downstream towards confluence with southwest tributary.







Photograph 17: 02/03/21. Upper portion of Drainage G looking downstream.



Photograph 18: 02/03/21. Downstream end of Drainage G looking offsite at concrete culvert inlet.



Photograph 19: 02/03/21. View of Drainage H within offsite survey area.



Photograph 20: 02/03/21. Roadside ephemeral Drainage I located in offsite survey area.







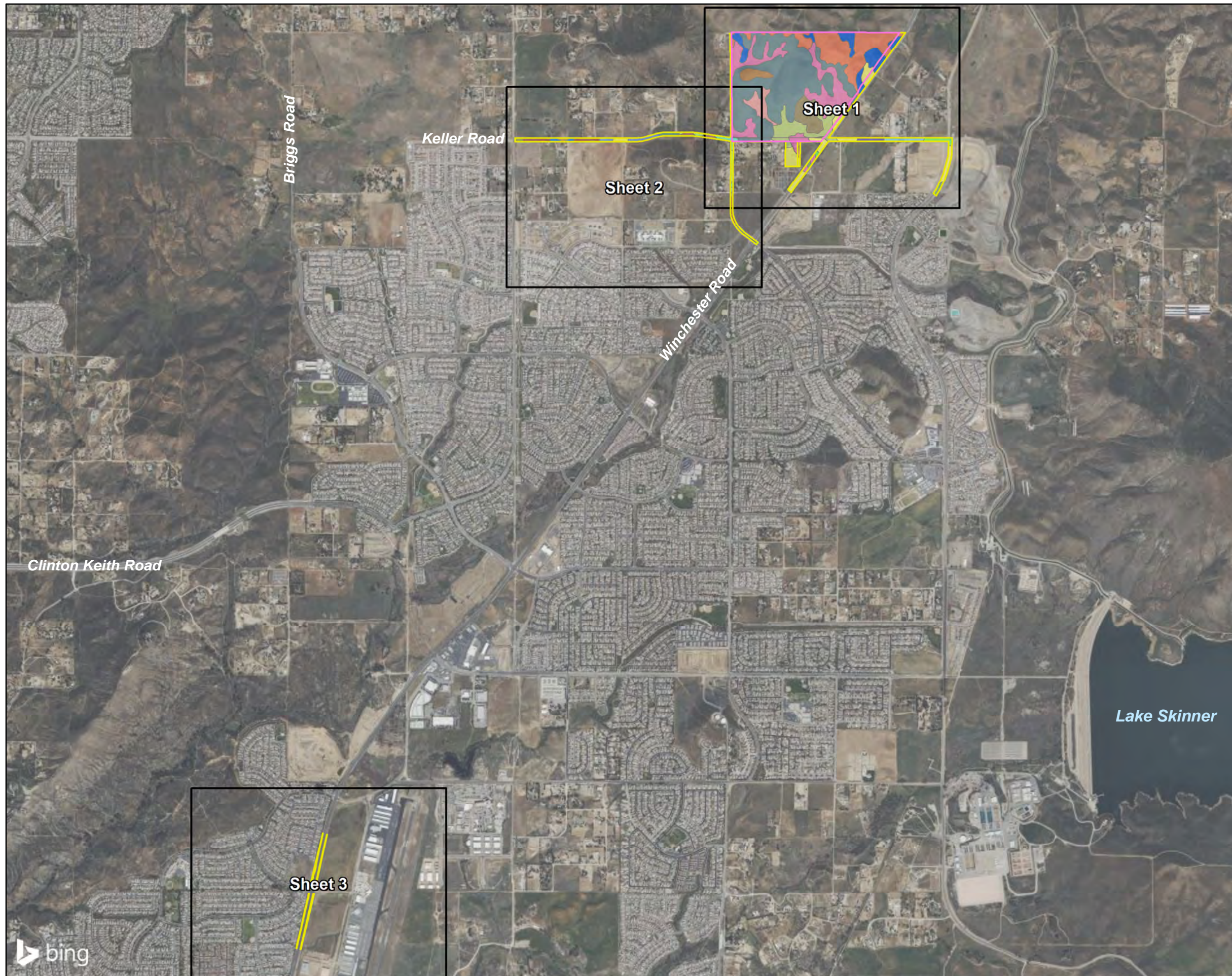
Photograph 21: 02/03/21. View depicting offsite portion of Drainage A looking south.



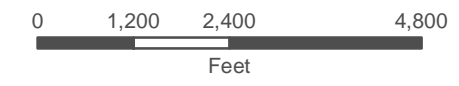
Photograph 22: 02/03/21. Looking northwesterly towards offsite portion of downstream end of Drainage A. Note, there is no discernible stream course in foreground.







- Onsite Project Site
- Offsite Project Site
- AaF - Altamont clay, 25 to 50 percent slopes
- AuC - Auld clay, 2 to 8 percent slopes
- AuD - Auld clay, 8 to 15 percent slopes
- BfC - Bosanko clay, 2 to 8 percent slopes
- BkC2 - Buchenau silt loam, 2 to 8 percent slopes, eroded
- BxC2 - Buren loam, deep, 2 to 8 percent slopes, eroded
- CaD2 - Cajalco fine sandy loam, 8 to 15 percent slopes, eroded
- CaF2 - Cajalco fine sandy loam, 15 to 35 percent slopes, eroded
- CbF2 - Cajalco rocky fine sandy loam, 15 to 50 percent slopes, eroded
- Cf - Chino silt loam, drained, saline-alkali
- EcC2 - Escondido fine sandy loam, 2 to 8 percent slopes, eroded
- EcD2 - Escondido fine sandy loam, 8 to 15 percent slopes, eroded
- FwE2 - Friant fine sandy loam, 5 to 25 percent slopes, eroded
- GaA - Garretson very fine sandy loam, 0 to 2 percent slopes
- GaC - Garretson very fine sandy loam, 2 to 8 percent slopes
- GtA - Grangeville fine sandy loam, drained, 0 to 2 percent slopes
- LaC - Las Posas loam, 2 to 8 percent slopes
- LaD2 - Las Posas loam, 8 to 15 percent slopes, eroded
- LoF2 - Lodo gravelly loam, 15 to 50 percent slopes, eroded
- LpE2 - Lodo rocky loam, 8 to 25 percent slopes, eroded
- LpF2 - Lodo rocky loam, 25 to 50 percent slopes, eroded
- MmB - Monserate sandy loam, 0 to 5 percent slopes
- MmC2 - Monserate sandy loam, 5 to 8 percent slopes, eroded
- PoC - Porterville clay, 0 to 8 percent slopes
- PtB - Porterville clay, moderately deep, slightly saline-alkali, 0 to 5 percent slopes
- PvD2 - Porterville gravelly clay, moderately deep, 2 to 15 percent slopes, eroded
- VaE3 - Vallecitos loam, 8 to 25 percent slopes, severely eroded
- VeC2 - Vallecitos loam, thick solum variant, 2 to 8 percent slopes, eroded
- VsD2 - Vista coarse sandy loam, 8 to 15 percent slopes, eroded
- WxD2 - Wyman fine sandy loam, 8 to 15 percent slopes, eroded



1 inch = 2,400 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

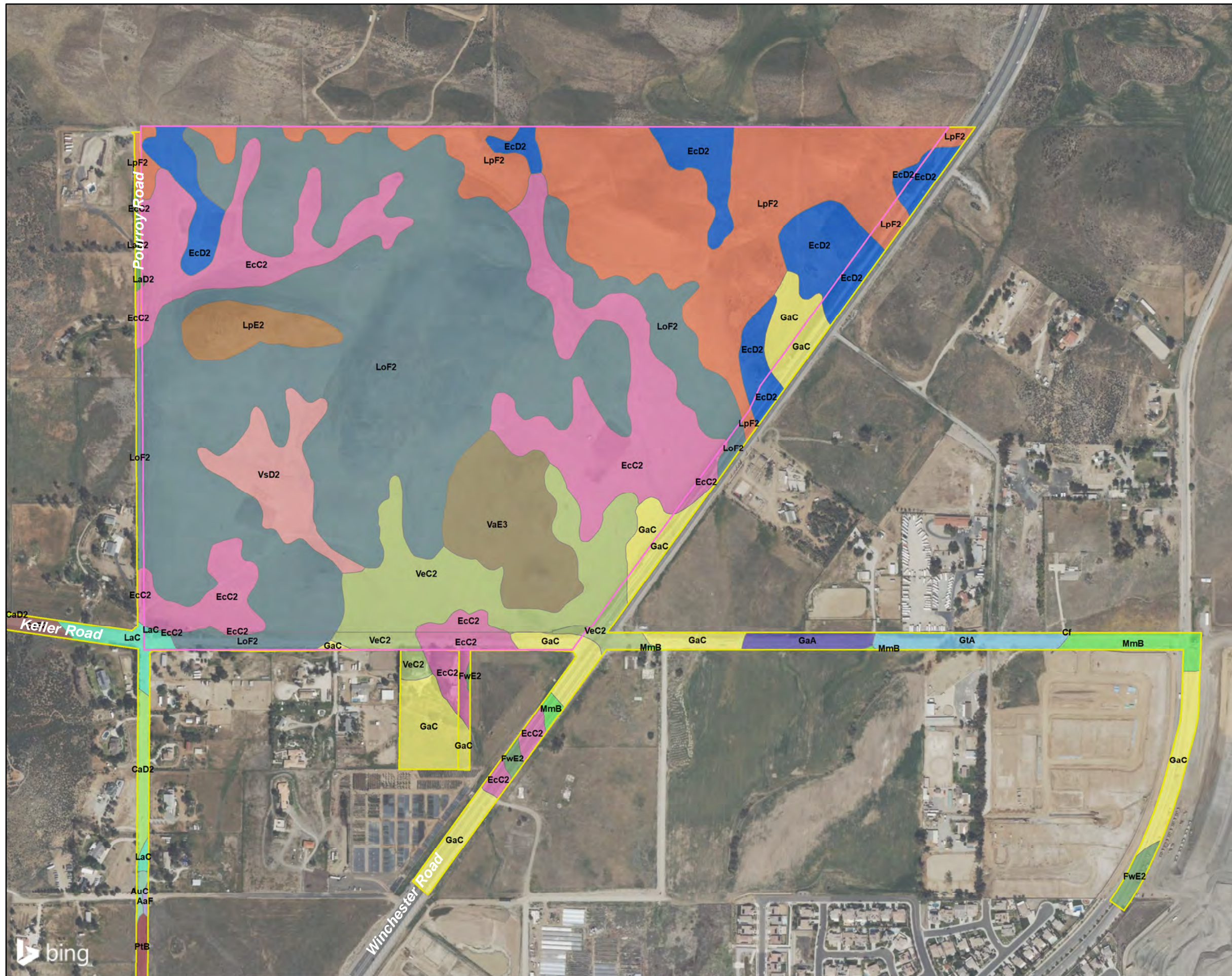
**KELLER CROSSING PROJECT**  
 Soils Map

GLENN LUKOS ASSOCIATES 

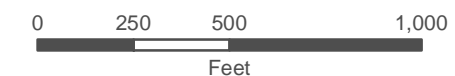
Exhibit 6 - Key Map







- Onsite Project Site
- Offsite Project Site
- AaF - Altamont clay, 25 to 50 percent slopes
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- Cf - Chino silt loam, drained, saline-alkali
- EcC2 - Escondido fine sandy loam, 2 to 8 percent slopes, eroded
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- LpE2 - Lodo rocky loam, 8 to 25 percent slopes, eroded
- LpF2 - Lodo rocky loam, 25 to 50 percent slopes, eroded
- MmB - Monserate sandy loam, 0 to 5 percent slopes
- PtB - Porterville clay, moderately deep, slightly saline-alkali, 0 to 5 percent slopes
- VaE3 - Vallecitos loam, 8 to 25 percent slopes, severely eroded
- VeC2 - Vallecitos loam, thick solum variant, 2 to 8 percent slopes, eroded
- VsD2 - Vista coarse sandy loam, 8 to 15 percent slopes, eroded



1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

## KELLER CROSSING PROJECT

Soils Map

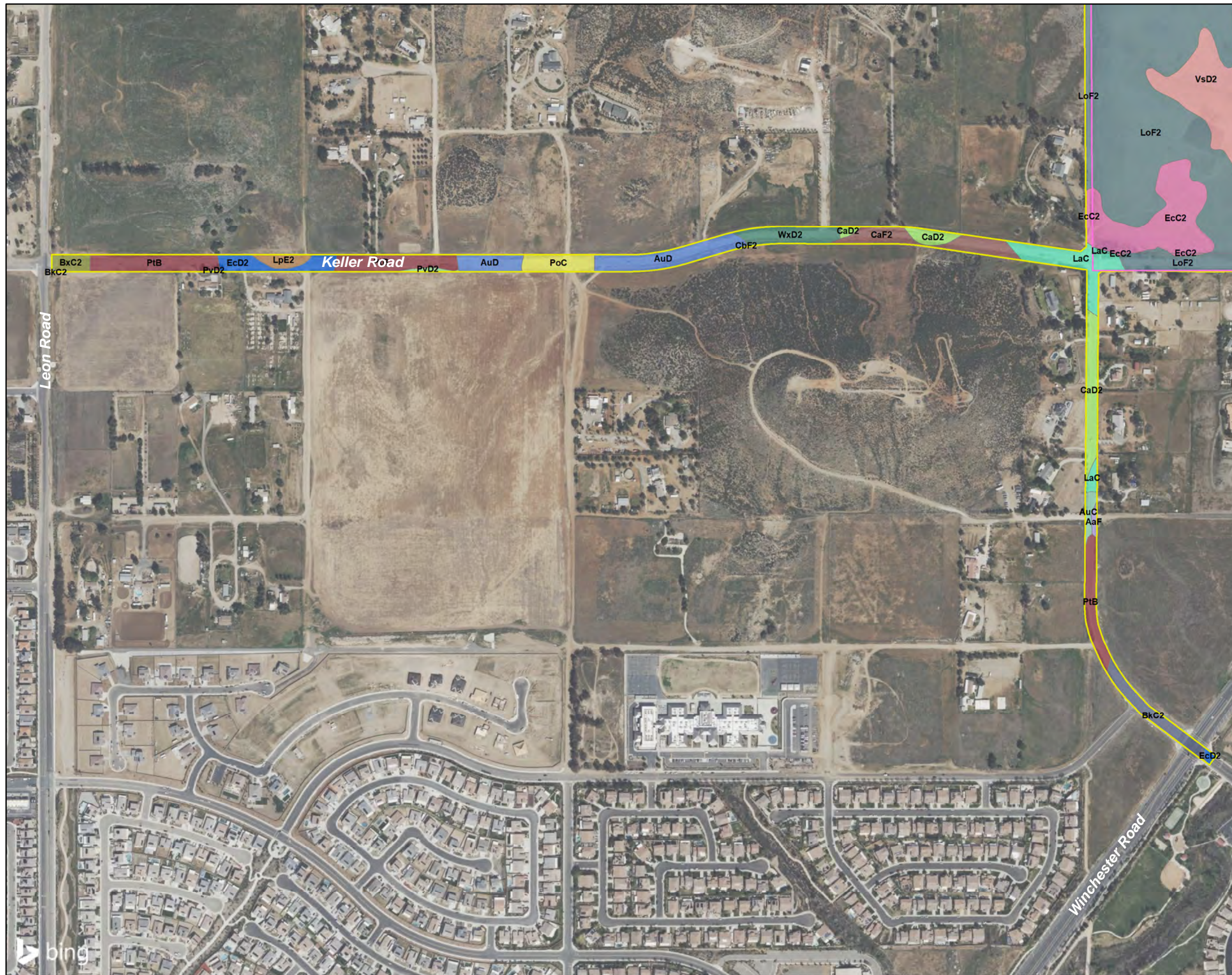
GLENN LUKOS ASSOCIATES



Exhibit 6 - Sheet 1







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- Offsite Project Site
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- AuD - Auld clay, 8 to 15 percent slopes
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- BxC2 - Buren loam, deep, 2 to 8 percent slopes, eroded
- CaD2 - Cajalco fine sandy loam, 8 to 15 percent slopes, eroded
- CaF2 - Cajalco fine sandy loam, 15 to 35 percent slopes, eroded
- CbF2 - Cajalco rocky fine sandy loam, 15 to 50 percent slopes, eroded
- Ecc2 - Escondido fine sandy loam, 2 to 8 percent slopes, eroded
- EcD2 - Escondido fine sandy loam, 8 to 15 percent slopes, eroded
- LaC - Las Posas loam, 2 to 8 percent slopes
- LoF2 - Lodo gravelly loam, 15 to 50 percent slopes, eroded
- LpE2 - Lodo rocky loam, 8 to 25 percent slopes, eroded
- PoC - Porterville clay, 0 to 8 percent slopes
- PtB - Porterville clay, moderately deep, slightly saline-alkali, 0 to 5 percent slopes
- PvD2 - Porterville gravelly clay, moderately deep, 2 to 15 percent slopes, eroded
- VsD2 - Vista coarse sandy loam, 8 to 15 percent slopes, eroded
- WxD2 - Wyman fine sandy loam, 8 to 15 percent slopes, eroded



0 250 500 1,000

Feet

1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

## KELLER CROSSING PROJECT

Soils Map

GLENN LUKOS ASSOCIATES

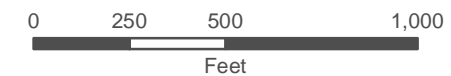


Exhibit 6 - Sheet 2





- Offsite Project Site
- AuC - Auld clay, 2 to 8 percent slopes
- BfC - Bosanko clay, 2 to 8 percent slopes
- BxC2 - Buren loam, deep, 2 to 8 percent slopes, eroded
- LaC - Las Posas loam, 2 to 8 percent slopes
- MmC2 - Monserate sandy loam, 5 to 8 percent slopes, eroded



1 inch = 500 feet

Coordinate System: State Plane 6 NAD 83  
 Projection: Lambert Conformal Conic  
 Datum: NAD83  
 Map Prepared by: K. Kartunen, GLA  
 Date Prepared: July 20, 2022

## KELLER CROSSING PROJECT

Soils Map

GLENN LUKOS ASSOCIATES



Exhibit 6 - Sheet 3







**DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT  
915 WILSHIRE BOULEVARD, SUITE 930  
LOS ANGELES, CALIFORNIA 90017**

April 6, 2021

SUBJECT: Approved Jurisdictional Determination

Martin Rasnick  
Glenn Lukos Associates, Inc.  
1940 E. Deere Avenue, Suite 250  
Santa Ana, California 92705

Dear Mr. Rasnick:

I am responding to your request (File No. SPL-2021-00114) dated February 16, 2021, for clarification whether a Department of the Army Permit is required for the Keller Crossing Residential Development Project (project) site, located in the Community of French Valley, Riverside County, California. The proposed approximately 210.10-acre project site is centered at approximately lat. 33.630982°N, long. 117.096236°W (Exhibit 1-3).

The Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, a permit would likely be required. The first test determines whether the proposed project is located within the Corps' geographic jurisdiction (i.e., it is within a water of the United States). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. This evaluation pertains only to geographic jurisdiction.

Based on the jurisdictional determination provided, it appears the project site does not contain waters of the United States pursuant to 33 CFR Part 325.9. The basis for our determination can be found in the enclosed Approved Jurisdictional Determination form. Due to this determination, a Department of the Army permit would not be required for activities on this project site.

This letter includes an approved jurisdictional determination for the Keller Crossing Residential Development Project site. If you wish to submit new information regarding this jurisdictional determination, please do so within 60 days. We will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. If you object to this or any revised or reissued jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) and Request for Appeal (RFA) form. If you wish to appeal this decision, you must submit a completed RFA form within 60 days of the date on the NAP to the Corps South Pacific Division Office at the following address:

Tom Cavanaugh  
Administrative Appeal Review Officer  
U.S. Army Corps of Engineers  
South Pacific Division, CESPDPDO  
450 Golden Gate Ave.  
San Francisco, CA 94102

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5 (see below), and that it has been received by the Division Office by **June 6, 2021**.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular project site identified in your request, and is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

Thank you for participating in the regulatory program. If you have any questions, please contact Miriam Yemane, of my team, at 213-452-3411 or via e-mail at [Miriam.Yemane@usace.army.mil](mailto:Miriam.Yemane@usace.army.mil). Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey).

Sincerely,

A handwritten signature in blue ink, appearing to read 'James E. Mace', with a stylized flourish at the end.

James E. Mace  
Lead, Orange and Riverside Counties Team  
South Coast Branch  
Regulatory Division

Enclosure(s)

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL		
Applicant: Martin Rasnick	File Number: SPL-2021-00114	Date: APRL 6, 2021
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E
SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <a href="http://www.usace.army.mil/cecw/pages/reg_materials.aspx">http://www.usace.army.mil/cecw/pages/reg_materials.aspx</a> or Corps regulations at 33 CFR Part 331.		
A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.		
<ul style="list-style-type: none"> <li>ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.</li> <li>OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.</li> </ul>		
B: PROFFERED PERMIT: You may accept or appeal the permit		
<ul style="list-style-type: none"> <li>ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.</li> <li>APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.</li> </ul>		
C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.		
D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.		

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

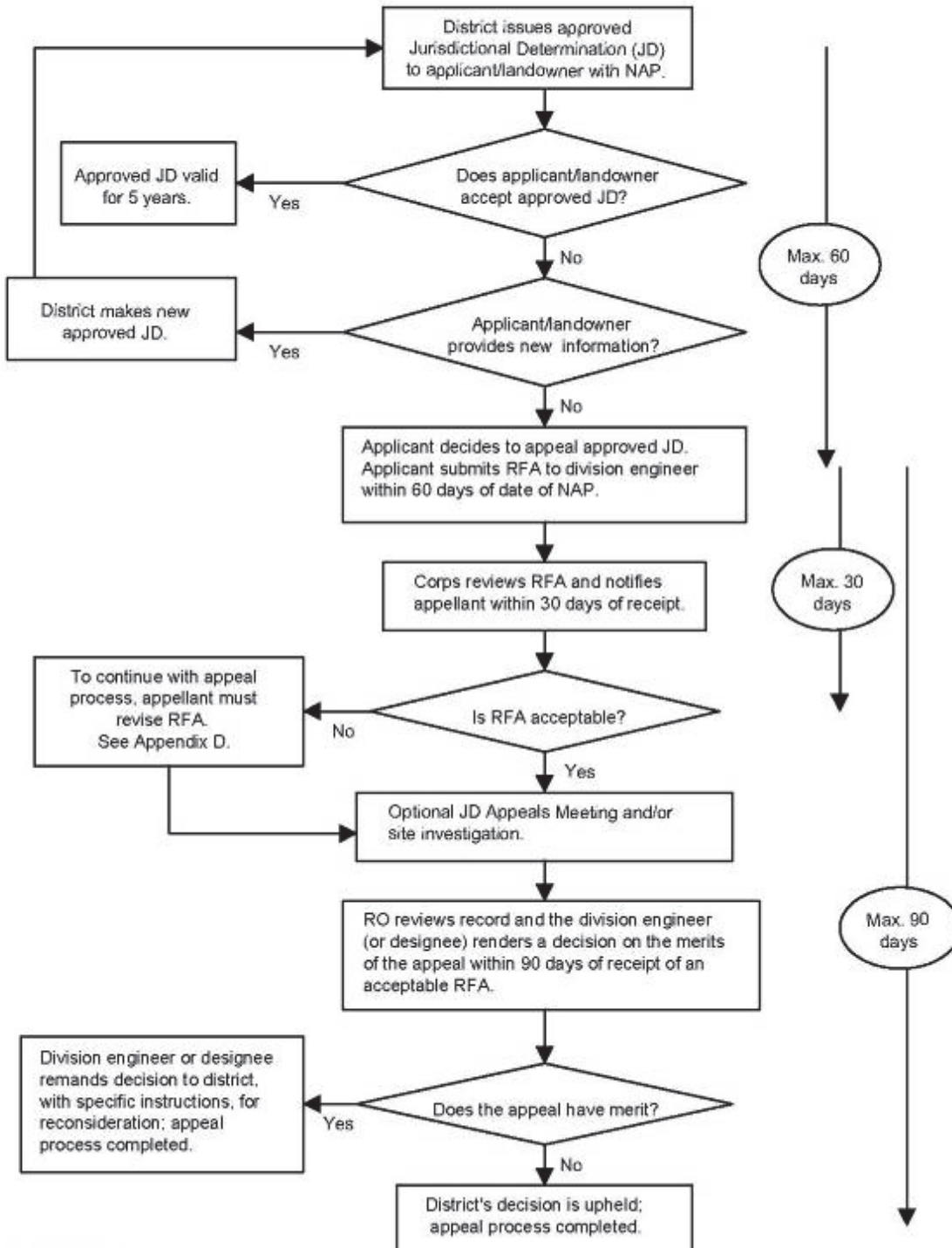
**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

<p>If you have questions regarding this decision and/or the appeal process you may contact:</p> <p>Miriam Yemane U.S. Army Corps of Engineers Los Angeles District 915 WILSHIRE BOULEVARD, SUITE 930 LOS ANGELES, CALIFORNIA 90017</p> <p>Phone: 213-452-3411 Email: Miriam.Yemane@usace.army.mil</p>	<p>If you only have questions regarding the appeal process you may also contact: Thomas J. Cavanaugh Administrative Appeal Review Officer U.S. Army Corps of Engineers South Pacific Division 450 Golden Gate Ave. San Francisco, CA 94102 Phone: (415) 503-6574 Fax: (415) 503-6646 Email: thomas.j.cavanaugh@usace.army.mil</p>
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**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:
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### Administrative Appeal Process for Approved Jurisdictional Determinations



**§ 331.5 Criteria.**

(a) *Criteria for appeal* —(1) *Submission of RFA*. The appellant must submit a completed RFA (as defined at §331.2) to the appropriate division office in order to appeal an approved JD, a permit denial, or a declined permit. An individual permit that has been signed by the applicant, and subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, may be appealed under this process, provided that the applicant has not started work in waters of the United States authorized by the permit. The RFA must be received by the division engineer within 60 days of the date of the NAP.

(2) *Reasons for appeal*. The reason(s) for requesting an appeal of an approved JD, a permit denial, or a declined permit must be specifically stated in the RFA and must be more than a simple request for appeal because the affected party did not like the approved JD, permit decision, or the permit conditions. Examples of reasons for appeals include, but are not limited to, the following: A procedural error; an incorrect application of law, regulation or officially promulgated policy; omission of material fact; incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands; incorrect application of the Section 404(b)(1) Guidelines (see 40 CFR Part 230); or use of incorrect data. The reasons for appealing a permit denial or a declined permit may include jurisdiction issues, whether or not a previous approved JD was appealed.

(b) *Actions not appealable*. An action or decision is not subject to an administrative appeal under this part if it falls into one or more of the following categories:

- (1) An individual permit decision (including a letter of permission or a standard permit with special conditions), where the permit has been accepted and signed by the permittee. By signing the permit, the applicant waives all rights to appeal the terms and conditions of the permit, unless the authorized work has not started in waters of the United States and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7;
- (2) Any site-specific matter that has been the subject of a final decision of the Federal courts;
- (3) A final Corps decision that has resulted from additional analysis and evaluation, as directed by a final appeal decision;
- (4) A permit denial without prejudice or a declined permit, where the controlling factor cannot be changed by the Corps decision maker (e.g., the requirements of a binding statute, regulation, state Section 401 water quality certification, state coastal zone management disapproval, etc. (See 33 CFR 320.4(j)));
- (5) A permit denial case where the applicant has subsequently modified the proposed project, because this would constitute an amended application that would require a new public interest review, rather than an appeal of the existing record and decision;
- (6) Any request for the appeal of an approved JD, a denied permit, or a declined permit where the RFA has not been received by the division engineer within 60 days of the date of the NAP;
- (7) A previously approved JD that has been superceded by another approved JD based on new information or data submitted by the applicant. The new approved JD is an appealable action;
- (8) An approved JD associated with an individual permit where the permit has been accepted and signed by the permittee;
- (9) A preliminary JD; or
- (10) A JD associated with unauthorized activities except as provided in §331.11.