Project Site
Survey Route

Vegetation

Diegan Coastal Sage Scrub
Non-native Grassland
Non-native Vegetation
Disturbed Habitat
Developed

Sensitive Resources

CAGN Coastal California Gnatcatcher (*Polioptila californica californica*)
COHA Cooper's Hawk (*Accipiter cooperii*)
MONA Monarch Butterfly (*Danaus plexippus*)
OTWH Orange-throated Whiptail (*Aspidoscelis hyperythra beldingi*)
RCSP Southern California Rufous-crowned Sparrow (*Aimophila ruficeps canescens*)
TUVU Turkey Vulture (*Cathartes aura*)
Bl San Diego Sunflower (*Bahiopsis laciniata*)
Rc Coulter's Matilija Poppy (*Romneya coulteri*)

Ridgeton Drive
Castle Brook Court
Wellington Hill Drive
Melrose Place
Jackson Hill Drive

Bl (3)
COHA
TUVU
Bl
Bl (55)
OTWH
Bl (20)
Bl (6)
CAGN (Pair)
MONA
Not a Part
RCSP
Bl (25)
Bl (75)
Bl (15)
Bl (10)
Bl (8)
Bl (5)
Bl (46)
Bl (56)
Bl (4)
Bl (17)
Bl (7)
Bl (9)
Bl (12)
Rc (38)

I:\PROJECTS\P\PHC\PHC-20_BrightwaterRanch\Map\CAGN\Fig5_Vegetation_SurveyRoute.mxd PHC-20 05/20/14 - RK

Vegetation and Sensitive Resources

BRIGHTWATER RANCH

HELIX Environmental Planning

N 0 275 Feet

Figure 5

HELIX Environmental Planning, Inc.
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La Mesa, CA 91942
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October 19, 2015 PHC-20

Mr. Sohail Bokhari
Director of Planning & Engineering
Pulte Home Corporation
27101 Puerta Real, Suite 300
Mission Viejo, CA 92691

Re: Brightwater Ranch Jurisdictional Delineation Letter Report and Preliminary Jurisdictional Determination

Dear Mr. Bokhari:

This jurisdictional delineation letter report (JDLR) presents the results of a formal jurisdictional delineation performed by HELIX Environmental Planning, Inc. (HELIX) and verified by the U.S. Army Corps of Engineers (USACE) for the Brightwater Ranch Project (project). This letter summarizes the latest federal and state guidance and methodologies employed in conducting a formal delineation for potential jurisdictional waters of the U.S and state; the results of the fieldwork; and the amount, type, and location of the delineated potential regulated aquatic resources occurring within the approximate 76.0-acre project site (Assessor's Parcel Number 397-180-13). The project site is also synonymous with the delineation survey area (Figures 1 through 3 [all figures are included in Attachment A]).

SUMMARY

The waters of the U.S. and state delineated at the project site include:

- 0.114 acre (2,272 linear feet) of non-wetland waters of the U.S. and State regulated by the USACE and Regional Water Quality Control Board (RWQCB)
- 0.063 acre (2,755 linear feet) of non-wetland waters of the state in the form of swale/erosive feature regulated by RWQCB
- 0.17 acre (4,395 linear feet) of unvegetated streambed regulated by the California Department of Fish and Wildlife (CDFW)
- 0.11 acre of vegetated streambed in the form of gullying streambank/riparian extent regulated by CDFW

INTRODUCTION

Project Location

The survey area is located within the unincorporated community of Lakeside in San Diego County, California. Specifically, the site is located northwest of Business Route 8/East Main Street, southwest of Los Coches Road, at the eastern terminus of Jackson Hill Drive within unsectioned lands in Township 15 South, Range 1 East on the U.S. Geological Survey (USGS) 7.5-minute El Cajon quadrangle map (USGS 1975) (Figures 1 through 3).

Project Description

The project proposes a 66-unit single-family residential subdivision (Figure 3). The remainder of the site will remain undeveloped and placed within biological open space, with the exception of a proposed water utility line, 16-foot-wide access road, and 24-foot-wide easement over the access road and underlying utility line in the southern portions of the site. An existing water tank, access road, and 30-foot-wide easement occur internal to the project site and are not a part of the proposed project.

REGULATORY FRAMEWORK

Aquatic environments and habitats occurring within California are regulated by the USACE, RWQCB, and CDFW under the following federal laws, as applicable to the survey area.

Federal Regulations

Clean Water Act, Section 404

Pursuant to Section 404 of the Clean Water Act (CWA), USACE is authorized to regulate any activity that would result in the discharge of dredged or fill material into waters of the U.S., which include those waters listed in 33 Code of Federal Regulations (CFR) Part 328 (Definitions). The fundamental rationale of Section 404 of the CWA is that no discharge of dredged or fill material should be permitted if there is a practicable alternative that would be less damaging to aquatic resources or if significant degradation would occur to waters of the U.S. (including wetlands).

USACE, with oversight by the U.S. Environmental Protection Agency (USEPA), has the principal authority to issue CWA Section 404 Permits (40 CFR Part 230). Under two 1989 Memorandums of Agreement between USEPA and the Department of Defense, USACE is given sole responsibility for making final permit decisions pursuant to Section 404, and "conducts jurisdictional delineations associated with the day-to-day administration of the Section 404 program." However, USEPA retains the authority to enforce compliance with Section 404, and maintains the power to overrule USACE decisions on the issuance or denial of permits. If there is a dispute about whether an area can be regulated, USEPA has the ultimate authority to

determine the actual geographic scope of waters of the U.S. subject to jurisdiction under all sections of the CWA, including the Section 404 regulatory program (USEPA 1989a, 1989b).

Clean Water Act, Section 401

If it is determined that an activity proposed within jurisdictional waters requires a permit pursuant to Section 404 of the CWA, then, pursuant to Section 401 of the CWA the RWQCB (Region 9) must certify that the discharge will comply with state water quality standards, or waive the certification requirement. The RWQCB, as delegated by USEPA, has the principal authority to issue a CWA Section 401 water quality certification or conditional waiver.

State Regulations

Lake and Streambed Alteration Program

Pursuant to Section 1600 *et seq*. of the CFGC, the CDFW regulates activities of an applicant's project that would substantially alter the flow, bed, channel, or bank of streams or lakes unless certain conditions outlined by CDFW are met by the applicant. The limits of CDFW jurisdiction are defined in CFGC Section 1600 *et seq*. as the "bed, channel, or bank of any river, stream, or lake designated by [CDFW] in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit." However, in practice, the CDFW usually extends its jurisdictional limit and assertion to the top of a bank of a stream, the bank of a lake, or outer edge of the riparian vegetation, whichever is wider.

In summary, CDFW links stream protection, conservation, and management with the presence (and/or indirect consideration) of fish, wildlife, and their habitats. CDFW does not consider a stream or watercourse defined by particular flow events, such as bankfull flow or ordinary high water, but rather by the local topography or elevations of the land that confine a stream to a definite course when its waters rise to their highest level. Thus, the watercourse is a stream and its boundaries define the maximal extent or expression of a stream on the landscape. All streams (manmade and natural) are subject to CDFW jurisdiction (Brady et. al. 2014).

California Water Code

Pursuant to Section 13000 *et seq*. of the California Water Code (CWC) (the 1969 Porter-Cologne Water Quality Act [Porter-Cologne]), the RWQCB is authorized to regulate any activity that would result in discharges of waste or fill material into waters of the state, including "isolated" waters and/or wetlands (e.g., vernal pools and seeps). Waters of the state include any surface or groundwater within the boundaries of the state (CWC Section 13050[e]). Porter-Cologne authorizes the State Water Resources Control Board (SWRCB) to adopt, review, and revise policies for all waters of the state and directs the RWQCB to develop and implement regional Basin Plans that recognize and are designed to maintain the unique characteristics of each region with regard to natural water quality, actual and potential beneficial uses, maintaining water quality, and addressing the water quality problems of that region (CWC Section 13050[j]).

California Water Code Section 13170 also authorizes the SWRCB to adopt water quality control plans on its own initiative. The Water Quality Control Plan for the San Diego Basin (RWQCB 1994, as amended) is designed to preserve and enhance the quality of water resources. The purpose of the Water Quality Control Plan is to designate beneficial uses of surface waters and groundwater, designate water quality objectives for the reasonable protection of those uses, and establish an implementation plan to achieve the objectives within RWQCB Region 9. Designated beneficial uses of state waters that may be protected against degradation includes preservation and enhancement of fish, wildlife, designated biological habitats of special significance, and other aquatic resources or preserves.

JURISDICTIONAL DELINEATION METHODOLOGY

Pre-survey Investigations

Prior to conducting the field delineation for potential jurisdictional waters of the U.S. (including wetlands), HELIX ecologist Joshua Zinn reviewed available biological reports, historical land use of the property, local and regional climactic data, and areas with topographical configurations and vegetative signatures occurring within the survey area that may suggest the potential or presence of jurisdictional waters of the U.S. at the time of the field survey. This information was evaluated by consulting the following available sources:

- 7.5-minute USGS El Cajon Quadrangle (USGS 1975)
- National Hydrography Dataset (USGS 2014)
- 2012 aerial maps of the survey area (USDA National Agriculture Imagery Program) (USDA 2012)
- National Wetlands Inventory (NWI) Interactive Wetlands Mapper (USFWS 2014)
- California Environmental Resources Evaluation System, California Wetlands Information System Wetland Databases and Inventories (CERES 2014)
- NRCS Web Soil Survey (NRCS 2014a)
- NRCS Soils Website (NRCS 2014b)
- NRCS Official Soil Series Descriptions (NRCS 2014c)
- NRCS National List of Hydric Soils (NRCS 2014d)
- California Soil Resource Lab (U.C. Davis 2014a)
- Information Center for the Environment (U.C. Davis 2014b)
- California Watershed Portal (CalEPA 2014)
- California Watershed Network (CWN 2014)
- Office of Water Programs, Water Quality Planning Tool (CSUS 2014)

- Digital Watershed (USEPA 2014)
- Western Regional Climate Center (WRCC 2014)
- National Weather Service Climate Office (NOAA 2014)

Field Survey and Delineation for Waters of the U.S.

On November 7, 2014, HELIX ecologist and regulatory specialist conducted a field survey and formal jurisdictional delineation of potentially regulated waters (including wetlands) within the survey area.

All acquired field data were obtained by recording the presence (including extents, types, and boundaries) of potential jurisdictional waters using a Trimble XH subfoot-accuracy handheld Global Positioning System (GPS) unit. All acquired field data were submitted to HELIX's geographic information system (GIS) specialists for post-field processing. Post-field processing was conducted in tandem by a HELIX GIS specialist and the biologist who performed the fieldwork. Post-field analysis used Trimble Pathfinder (Version 2.1) GIS software to code, define, designate, and edit all acquired GPS field data representing potential jurisdictional waters occurring within the survey area.

The formal jurisdictional delineation and assessment of potentially regulated waters (including wetlands) were conducted within the survey area and delineated pursuant to the guidance and criteria outlined in and in accordance with the following:

- 33 CFR 328 (Definition of Waters of the United States)
- Regulatory Guidance Letter (RGL) 88-06 and RGL 05-05
- The *Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory 1987)
- The *Corps of Engineers Wetlands Delineation Manual* On-Line Edition (Environmental Laboratory 2005)
- The *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)* (Environmental Laboratory 2008)[1]
- *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States: A Delineation Manual* (Lichvar and McColley 2008)[2]
- *Review of Ordinary High Water Mark Indicators for Delineating Arid Streams in the Southwestern United States* (Lichvar and Wakeley 2004)

[1] *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States: A Delineation Manual* and *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)* are guidance documents for delineating waters in the form of federally defined wetlands only (e.g., 33 CFR 328.3[b]).

[2] Datasheets from this field delineation manual were used as guidance documents and are not included in this JDLR.

- *Distribution of Ordinary High Water Mark (OHWM) Indicators and their Reliability in Identifying the Limits of "Waters of the United States" in Arid Southwestern Channels* (Lichvar et al. 2006)
- *Review and Synopsis of Natural and Human Controls on Fluvial Channel Processes in the Arid West* (Field and Lichvar 2007)
- *Vegetation and Channel Morphology Responses to Ordinary High Water Discharge Events in Arid West Stream Channels* (Lichvar et al. 2009)
- *Survey of OHWM Indicator Distribution Patterns across Arid West Landscapes* (Lefebvre et al. 2013)
- Channel Classification across Arid West Landscapes in Support of OHW Delineation (Lefebvre et al. 2013)

It was determined through a pre-field survey, field reconnaissance, formal delineation efforts, and post-field assessment that the survey area does not currently support hydrophytic vegetation, hydric soils, or wetland hydrology.

Therefore, based upon federal guidance, normal circumstances[3], and ambient conditions of the survey area presents the potential for the presence of, at a minimum, one type of potentially federally regulated water: "other" waters of the U.S., warranting the formal field delineation/assessment effort using all relevant guidance and procedural documents (see above) for field indicators of all potential nonwetland waters of the U.S. (e.g., unvegetated ephemeral dry wash) and to define and identify the jurisdictional lateral extent of the ordinary high water mark (OHWM).[4]

Delineation for Potential Waters of the U.S. in the Form of Other Waters

OHWM indicators were used to delineate the lateral jurisdictional extent of potential nonwetland waters of the U.S. Lateral jurisdictional limits were established for all drainage features/channels occurring within the survey area in conjunction with field verification for a determination of the OHWM, which provides an acceptable estimate for the lateral jurisdictional limits. Therefore, boundaries for ephemeral wash waters of the state were determined (and recorded) by the presence of shelving and/or scour resulting in an established bank, bed, or channel of an ephemeral wash feature. The field indicators for the ephemeral washes occurring within the survey area were identified and delineated on the basis of observing the following (as applicable in light of the channelization of the riverine feature delineated within the survey area):

[3] As outlined in the Preface, Introduction, and Part IV Sections F and G of the On-line Edition of the 1987 *Corps Wetlands Delineation Manual* (Environmental Laboratory 2005), RGLs 82-02, 86-09 and 90-7 (following RGL 05-06 [Expired RGLs]. Unless superseded by specific provisions of subsequently issued regulations or RGLs, the guidance provided in RGLs generally remains valid after the expiration date, as discussed in the Federal Register notice on RGLs of March 22, 1999, FR Vol. 64, No. 54, page 13783.

[4] 33 CFR 328.3(e); RGL 88-06; RGL 05-05; and USACE OHWM field manuals (USACE 2006, 2007, 2008).

- water marks within their respective channel banks established by the fluctuations of water and indicated by physical characteristics such as clear, natural lines impressed on the banks;
- scour and shelving, local deposition, distinct and indistinct terraces, and changes in the character of soil;
- the presence of developed longitudinal bars within channel margins;
- type, abundance, and relative age of vegetation and/or destruction of terrestrial vegetation, exposed roots, and the presence and absence of litter and debris within the ephemeral channels;
- ephemeral channel configuration, estimated streamflow behavior, and other subtle geomorphic evidence indicative of regular flow levels;
- consideration of precipitation patterns and lack of consistent flow;
- geomorphic OHWM indicators (e.g., surface relief, cobblebars, benches, crested ripples, particle size distribution, mudcracks and gravel sheets); and
- pattern and location of relictual and abandoned channels and discontinuous drainage features

Federal Guidance for OHWM

The criteria for frequency and duration of the OHWM have not been defined under the CWA or under any guidance from USACE for field delineators; therefore, identifiable field indicators and characteristics of OHWM, best professional judgment, interpretation of 33 CFR 328.3(e) and 328.4, and appropriate RGLs were applied to determine the potential jurisdictional extent of the OHWM within the survey area. Fluvial channels occurring within the arid western region of the U.S. have recently been described as "ordinary" when they typically correspond to a 5- to 8-year event, and typically have an active floodplain with sparse vegetation cover, shifts in soil texture, and occasional alignment with distinctive bed and bank features (Field and Lichvar 2007). However, modeling has shown that slightly larger events (5- to 10-year recurrence) may be necessary to engage the active floodplain in arid systems (Lichvar et al. 2006).

OHWM and the limits of jurisdiction are discussed in the preamble to the USACE November 13, 1986, Final Rule, Regulatory Programs of the Corps of Engineers, Federal Register Volume 51, No. 219, page 41217, which discusses the proper interpretation of 33 CFR Part 328.4(c)(1) as follows:

> Section 328.4: Limits of Jurisdiction. Section 328.4(c)(1) defines the lateral limit of jurisdiction in nontidal waters as the OHWM provided that the jurisdiction is not extended by the presence of wetlands. Therefore, it should be concluded that, in the absence of wetlands, the upstream limit of [USACE] jurisdiction also stops when the OHWM is no longer perceptible.

In addition, RGL 88-06, issued June 27, 1988, discusses the OHWM as follows:

> The OHWM is the physical evidence (shelving, debris lines, etc.) established by normal fluctuations of water level. For rivers and streams, the OHWM is meant to mark the within-channel high flows, not the average annual flood elevation that generally extends beyond the channel.[5]

RGL 05-05, issued December 7, 2005, discusses the field practice and practicability of identifying, determining, and applying the OHWM for nontidal waters under Section 404 of the CWA (and under Sections 9 and 10 of the Rivers and Harbors Act of 1899), and states the following:

> Where the physical characteristics are inconclusive, misleading, unreliable, or otherwise not evident, districts may determine OHWM by using other appropriate means that consider the characteristics of the surrounding areas, provided those other means are reliable.[6] Such other reliable methods that may be indicative of the OHWM include, but are not limited to, lake and stream gage data, elevation data, spillway height, flood predictions, historic records of water flow, and statistical evidence.

Many stream channels in arid regions are dry for much of the year and, at times, may lack hydrology indicators entirely or exhibit relic OHWM features from exceptional hydrological events. RGL 05-05 further states the following:

> When making OHWM determinations, districts should be careful to look at characteristics associated with ordinary high water events, which occur on a regular or frequent basis. Evidence resulting from extraordinary events, including major flooding and storm surges, is not indicative of OHWM. For instance, a litter or wrack line resulting from a 200-year flood event would, in most cases, not be considered evidence of an OHWM.

[5] Following RGL 05-06 (Expired RGLs). Unless superseded by specific provisions of subsequently issued regulations or RGLs, the guidance provided in RGLs generally remains valid after the expiration date as discussed in the Federal Register (FR) notice on RGLs of March 22, 1999, FR Vol. 64, No. 54, page 13783.

[6] In some cases, the physical characteristics may be misleading and would not be reliable for determining the OHWM. For example, water levels or flows may be manipulated by human intervention for power generation or water supply. For such cases, districts should consider using other appropriate means to determine the OHWM (RGL 05-05).

Federal Guidance for Swales and Ditches

The survey area presents multiple swales.[7] These features are primarily typified undergoing accelerated erosion and exhibiting discontinuity (abatement into the upland landscape) along their gradient (through Diegan coastal sage scrub and, to a lesser extent, disturbed area) prior to conveyance with stormwater infrastructure located along the northeast portion of the survey area (Figure 4).

The survey area also presents cement lined ditches (brow ditches placed within upland [which have not replaced any natural drainages]) to capture any stormwater runoff prior to reaching a residential neighborhood. These cement lined ditches eventually convey into two stormwater infrastructure located at the northeast portion of the survey area (Figure 4).

Within the survey area the swales and cement lined ditches are not considered as potential jurisdictional water of the U.S. These features do not support and do not present an identifiable OHWM, are not tributaries to any receiving water, and do not support interstate commerce. Additionally, these swales and ditches only drain stormwater from the surrounding uplands during heavy rainfall events and do not support a relatively permanent flow of water (has less than a perennial or intermittent flow).

Based upon the *U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook* (USACE 2007) and *Revised Guidance on Clean Water Act Jurisdiction Following the Supreme Court Decision in Rapanos v. U.S. and Carabell v. U.S.* (USACE 2008), the USACE does not generally regulate certain geographic features such as:

- swales, erosional features (e.g. gullies) and small washes characterized by low volume, infrequent, and short duration flow, and

- ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water

RGL 07-02, issued July 4, 2007, discusses exemptions for construction or maintenance of irrigation ditches and maintenance of drainage ditches under Section 404 of Clean Water Act as follows:

> Corps and EPA guidance on the extent of CWA geographic jurisdiction define certain categories of "upland ditches" and "upland swales" that generally are not subject to CWA jurisdiction. Discharges of dredged or fill material into those defined categories of upland ditches and upland swales are not subject to either CWA permitting requirements or the subsection 404(f) exemptions.

[7] Swales can be described as generally poorly defined microtopographic surface features that *may* convey surface water in low volume and short duration flow (hours to days [usually in sheetflow within the swale feature]), during and following uncommon large storm events. Swales are commonly associated with riverine features (Hauer and Lamberti 2007).

Field Survey and Delineation for Potential Waters of the State

In addition to pre-field and reconnaissance surveys, potential waters of the state, exclusively were assessed and delineated within the survey area. Two state agencies may have jurisdiction over aquatic features occurring within the survey area (CDFW and RWQCB), each with its own definition of jurisdictional waters, as summarized below.

CDFW

CDFW does currently have a published delineation manual for delineating episodic streams within arid regions occurring within California. Although this delineation manual is for desert regions, the principals and methodology it provides is applicable to any episodic stream occurring throughout California. Therefore, in addition to the regulatory framework outlined above for the state's Lake and Streambed Alteration Program, potential waters of the state regulated by CDFW were assessed and delineated by HELIX within the project survey area pursuant to definitions and guidance provided in the following:

- *Methods to Describe and Delineate Episodic Stream Processes on Arid Landscapes For Permitting Utility Scale Solar Power Plants* (Brady et al. 2014)
- All applicable and relevant guidance outlined in *A Review of Stream Processes and Forms in Dryland Watersheds* (CDFG 2010)
- *Project Conservation Challenges in a Dryland Stream Environment* (Vyverberg 2010)
- *Classification of Wetland and Deepwater Habitats of the United States* (Cowardin et al. 1979)

For jurisdictional waters (e.g., jurisdictional aquatic habitat) CDFW links stream protection, conservation, and management with the presence (and/or indirect consideration) of fish, wildlife, and their habitats. In practice, the CDFW defines a stream as follows:

> A body of water that flows perennially, intermittently, or ephemerally and that is defined by the area in which water currently 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 (CDFG 2010).

Often swales do not have a developed bed and bank. Instead, swales have a smooth, subtle transition from the "head" of the swale to the "bed" of the swale, with no clear impressionable line or shelving resulting from surface water flow. In some cases, swales may still contribute to a surface hydrologic connection between upland and aquatic features if they are identifiable and are part of a network (and, thus, may be considered jurisdictional under the purview of CDFW [e.g., "waters of state interest"]). However, for underdeveloped, abandoned/relictual, and/or limited and abrupt swale features occurring in this region of California, such hydrological connections are dependent on large, uncommon storm events.

Based on the CFGC Section 1600 *et seq*. definition, relevant state regulations (see Regulatory Framework, above), CDFW regulatory practice, and past CDFW field guidance, swale features (individual and complexes) occurring within the survey area were also noted, delineated, and recorded as potential waters of the state.

Therefore, boundaries for waters of the state, as regulated by CDFW, in the form of unvegetated ephemeral dry wash, the riparian extent of the gullied streambank, and the swales (as a swale network) that have the ability to support fish and wildlife (including eventually [and indirectly] contributing conveyance into Los Coches Creek and the San Diego River) were determined (and recorded) by the presence of the established bed and banks and any associated riparian areas of these features (where applicable).

The cement lined ditches (brow ditches) are not considered as waters of the state under the purview of CDFW because they only capture stormwater runoff and have not replaced any natural drainage nor do they present habitat to fish and wildlife.

RWQCB

For jurisdictional water features occurring within the survey area, RWQCB jurisdiction was mapped identically for non-wetland waters as noted above for USACE jurisdiction (e.g., the lateral extent of OHWM only). RWQCB jurisdiction was delineated based on the presence of aquatic features that simultaneously meet the definition for waters of the state (CWC Section 13050[e]) *and* present "beneficial use" as outlined in the *Water Quality Control Plan for the San Diego Basin* (RWQCB 1994, as amended). If it was determined that any type of aquatic and/or aquatic-related features occurring within the survey area would present "beneficial use," the aquatic feature would be delineated (this would include all ephemeral and perennial washes and federally defined wetland).

Therefore, boundaries for waters of the state, as regulated by RWQCB, include the unvegetated ephemeral dry wash and swale features.

Linear topographical features that present the potential to convey extremely low volume/short duration sheetflow and near-surface flow that could physically and/or hydrologically connect and/or contribute beneficial uses(s) to more established downstream receiving aquatic features (e.g. swales) are considered as jurisdictional waters under the exclusive purview of the RWQCB.

RESULTS

Jurisdictional waters of the U.S. are listed for each aquatic habitat in Table 1.

As applicable, aquatic-related habitats were classified according to both the *Preliminary Descriptions of the Terrestrial Natural Communities of California* (Holland 1986) as modified by Oberbauer (Oberbauer et al. 2008), and *Classification of Wetlands and Deepwater Habitats of the United States* (Cowardin et al. 1979). Both classification systems incorporate a hierarchical structure of systems, subsystems, and classes to identify vegetation communities, wetland habitat

types, and cover types. Vegetation (or lack thereof) occurring within the project survey area is typically associated with channelized riverine systems within this area of California.

Photo-point locations are included in Figure 4, and representative photographs taken during the field delineation are included as Figures 5 through 9.

Table 1
JURISDICTIONAL WATERS OF THE U.S. AND STATE OCCURRING WITHIN THE SURVEY AREA[a,b]

Type of Potential Jurisdictional Waters	Type of Habitat (Holland 1986; Oberbauer et al. 2008)	Type of Habitat (Cowardin et al. 1979)	Acres	Linear Feet	Regulatory Authority
Jurisdictional Waters of the U.S. and State					
Other Waters (Unvegetated Ephemeral Dry Wash)	Drainage Features/ Non-vegetated Channel (64200)	Riverine; Intermittent; Unconsolidated Bottom, Sand, Seasonally Flooded, Fresh	0.114	2,272	USACE and RWQCB
		Subtotal Waters of the U.S.	*0.114*	*2,272*	
Jurisdictional Waters of the State, Exclusively					
Swale/Erosive Feature	N/A[c]	N/A[d]	0.063	2,755	RWQCB
		Subtotal Waters of the State	*0.063*	*2,755*	
Jurisdictional Streambed					
Unvegetated Streambed	N/A[c]	N/A[d]	0.17	4,395	CDFW
Streambank/Riparian Extent	N/A[c]	N/A[d]	0.11	N/A	CDFW
		Subtotal Jurisdictional Streambed	*0.28*	*4,395*	

[a] Based on the total area of potential jurisdictional waters delineated within the survey area.
[b] Acreage of all jurisdictional waters was determined by using the GIS program ArcGIS. All acreages are rounded to the nearest hundredth after summation, which may account for minor rounding error.
[c] The swales occur primarily in Diegan coastal sage scrub and to a lesser extent nonnative grassland. Holland (1986) and Oberbauer et al. 2008) does not have a corresponding vegetation community code for this cover type.
[d] Cowardin et al. (1979) does not classify swales or riparian extent as a deepwater habitat.

Preliminary Jurisdictional Determination Form for Potential Waters of the U.S.

Based on RGL 08-02, the permit applicant may elect to use a preliminary jurisdictional determination (JD) to voluntarily waive or set aside questions regarding CWA jurisdiction over a particular site, usually in the interest of allowing the landowner, permit applicant, or other "affected party" to move ahead expeditiously to obtain CWA Section 404 permit authorization where applicants determine that it is in their best interest to do so.

Preliminary JDs do not make an official determination of jurisdictional waters, and are nonbinding advisements that potential waters of the U.S. (including wetlands) *may* be present within a site and therefore should be assumed to be jurisdictional by USACE. A preliminary JD is not appealable under the USACE appeal process because it is not an official JD. If a preliminary JD is received by USACE, an approved JD can always be requested by the applicant at a later time, if necessary. Preliminary JDs cannot be used for determining whether a site has no aquatic features, no potential waters of the U.S. (including wetlands), geographically isolated waters and/or wetlands, or some jurisdictional and some nonjurisdictional waters.

A completed preliminary JD Form for this jurisdictional delineation of 0.05 acre (685-linear feet) of potential jurisdictional waters of the U.S. in the form of unvegetated non-wetland other waters is located in Attachment B.

Electronic Waters Upload Sheets for Potential Jurisdictional Waters

A separate electronic version of the Waters Upload Sheet (collectively containing all formally delineated potentially jurisdictional waters of the U.S. will be provided to the USACE during the authorization process so that USACE can automatically populate the data fields in its Operations Regulatory Module (ORM) database.

PERMITTING

Based upon the type and amount of potential jurisdictional aquatic resources formally delineated within the survey area the following permits and authorizations may be required for this proposed project:

CWA Section 404 Permitting

Based on the USACE's March 15, 2012, Special Public Notice *Issuance of Nationwide Permits and Issuance of Final Regional Conditions for the Los Angeles District*, it is anticipated that the USACE may recommend authorizing this project under the CWA Section 404 Nationwide Permit (NWP) Program (33 CFR 330). Specifically, it is anticipated that the USACE will recommend authorizing this project under Section 404 by complying with NWP 29 (Residential Developments) (USACE 2012).

NWP 29 is applicable to this project if the discharge does not cause the loss of greater than 0.5 acre of non-tidal waters of the U.S. including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds for which the USACE district engineer may waive the 300-linear-foot limit by making a written determination concluding that the discharge will result in minimal adverse effects

For CWA Section 404 authorization, USACE will require compensatory mitigation for both temporary and permanent impacts to jurisdictional waters of the U.S. that cannot be avoided.

CWA Section 401 Permitting

A Clean Water Act Section 401 Water Quality Certification administered by the RWQCB must be issued prior to any 404 Permit for impacts to waters of the U.S. USACE jurisdictional areas addressed in this report would also be subject to 401 Certification by the RWQCB. Submittal of Request for Water Quality Certification is expected to be required prior to project activities to the San Diego RWQCB.

Requisite compensatory mitigation for CWA Section 401 issuance would likely be congruent with acceptable CWA Section 404 mitigation.

CFGC Section 1600 *et seq*. Permitting

It is anticipated that a Notification for a Lake or Streambed Alteration Agreement (SAA) will required by the appropriate CDFW field office (South Coast Region). CDFW will ascertain which (or all) of the delineated aquatic features occurring within the survey area are under its regulatory purview. The SAA Notification process also allows CDFW to determine whether aquatic features will become "substantially adversely affected" under CFGC Section 1602(a), and to issue a Lake and Streambed Alteration Agreement in order to proceed with the project.

For CFGC Section 1600 *et seq*. permitting, CDFW will require compensatory mitigation for both temporary and permanent impacts to jurisdictional aquatic habitat they regulate which cannot be avoided as a result of the proposed project

CWC Section 13000 et seq. (Porter-Cologne) Waste Discharge Requirement

The RWQCB regulates the "discharge of waste" to waters of the state.[8] The definition of waters of the state is broader than that for waters of the U.S. in that all waters are considered to be a water of the state regardless of circumstances or condition. The term "discharge of waste" is also broadly defined in Porter-Cologne, such that discharges of waste include fill, any material resulting from human activity, or any other "discharge" that may directly or indirectly impact waters of the state. As conditional to this permit, best management practices (BMPs) will be required to ensure compliance with state water quality standards. BMPs can also be specified by the RWQCB based on the report of waste discharge (ROWD) (filed with the appropriate RWQCB by the applicant). The RWQCB is authorized to regulate discharges of waste and fill material to waters of the state (including "isolated" waters and wetlands) through the issuance of Waste Discharge Requirements (WDRs). WDRs are commonly issued based on the threshold of allowable pollutants into waters of the state.

Requisite compensatory mitigation for CWC Section 13000 *et seq*. issuance would likely be congruent with acceptable CFGC Section 1600 *et seq*. mitigation.

[8] "Waters of the state" is defined in CWC Section 13050(e).

We appreciate the opportunity to present you with this jurisdictional delineation letter report. Should you have any questions or require additional information, please do not hesitate to contact me at (619) 462-1515.

Sincerely,

Karl Osmundson
Biology Group Manager

Attachment A – Figures:

- Figure 1 – Regional Map
- Figure 2 – Project Vicinity
- Figure 3 – Survey Area
- Figure 4 – USACE/RWQCB Jurisdiction
- Figure 5 – CDFW Jurisdiction
- Figure 6 – Representative Photographs 1 and 2
- Figure 7 – Representative Photographs 3 and 4
- Figure 8 – Representative Photographs 5 and 6
- Figure 9 – Representative Photographs 7 and 8
- Figure 10 – Representative Photograph 9

Attachment B – Preliminary JD Form

Cc: Melanie Tymes, USACE
Kelly Fisher, CDFW
Lisa Honma, RWQCB

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ATTACHMENT A

FIGURES

I:\PROJECTS\P\PHC\PHC-20_BrightwaterRanch\Map\JD\Fig1_Regional.mxd PHC-20 12/16/14 RK

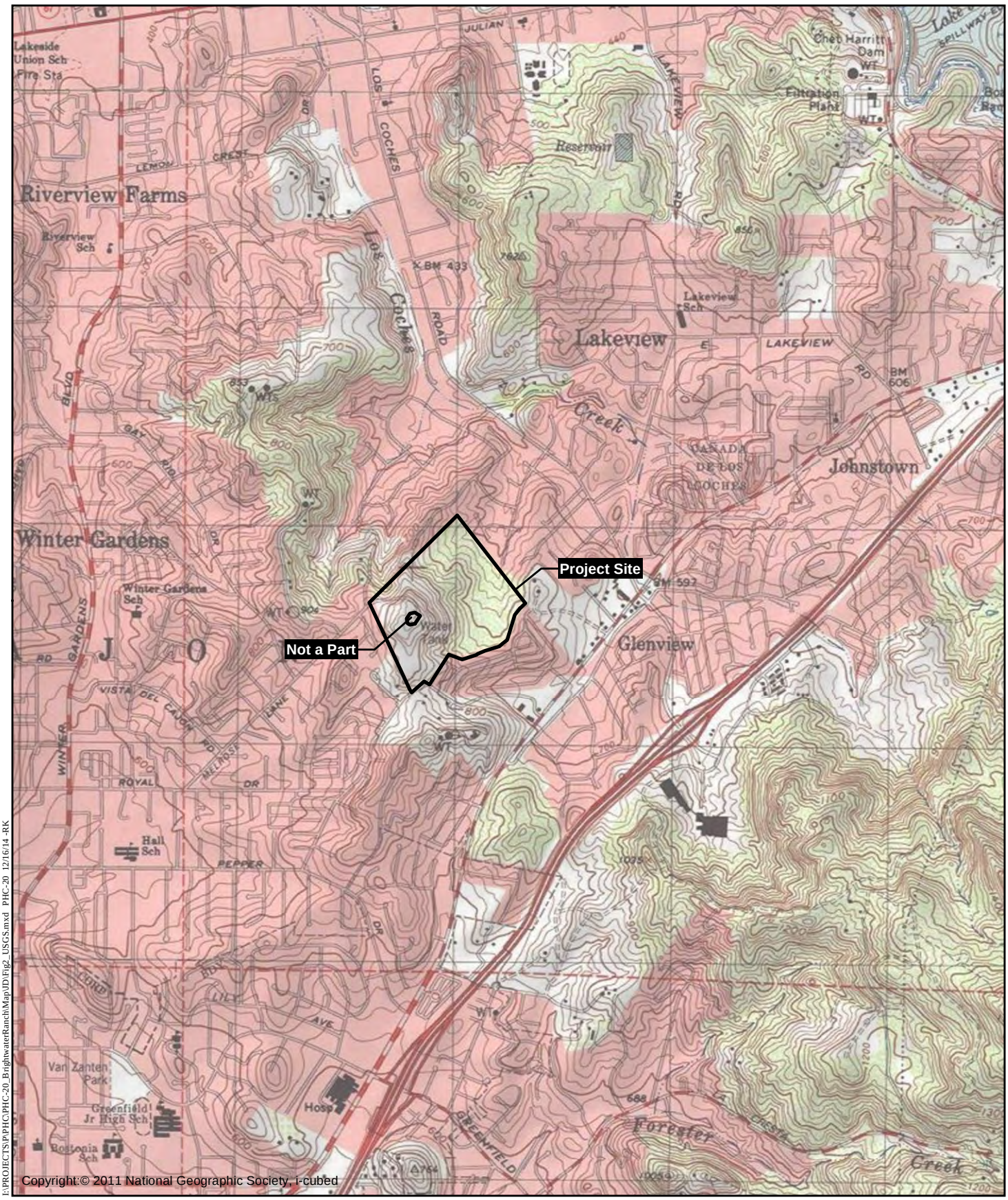
Regional Location Map

BRIGHTWATER RANCH

HELIX Environmental Planning

N 0 8 Miles

Figure 1



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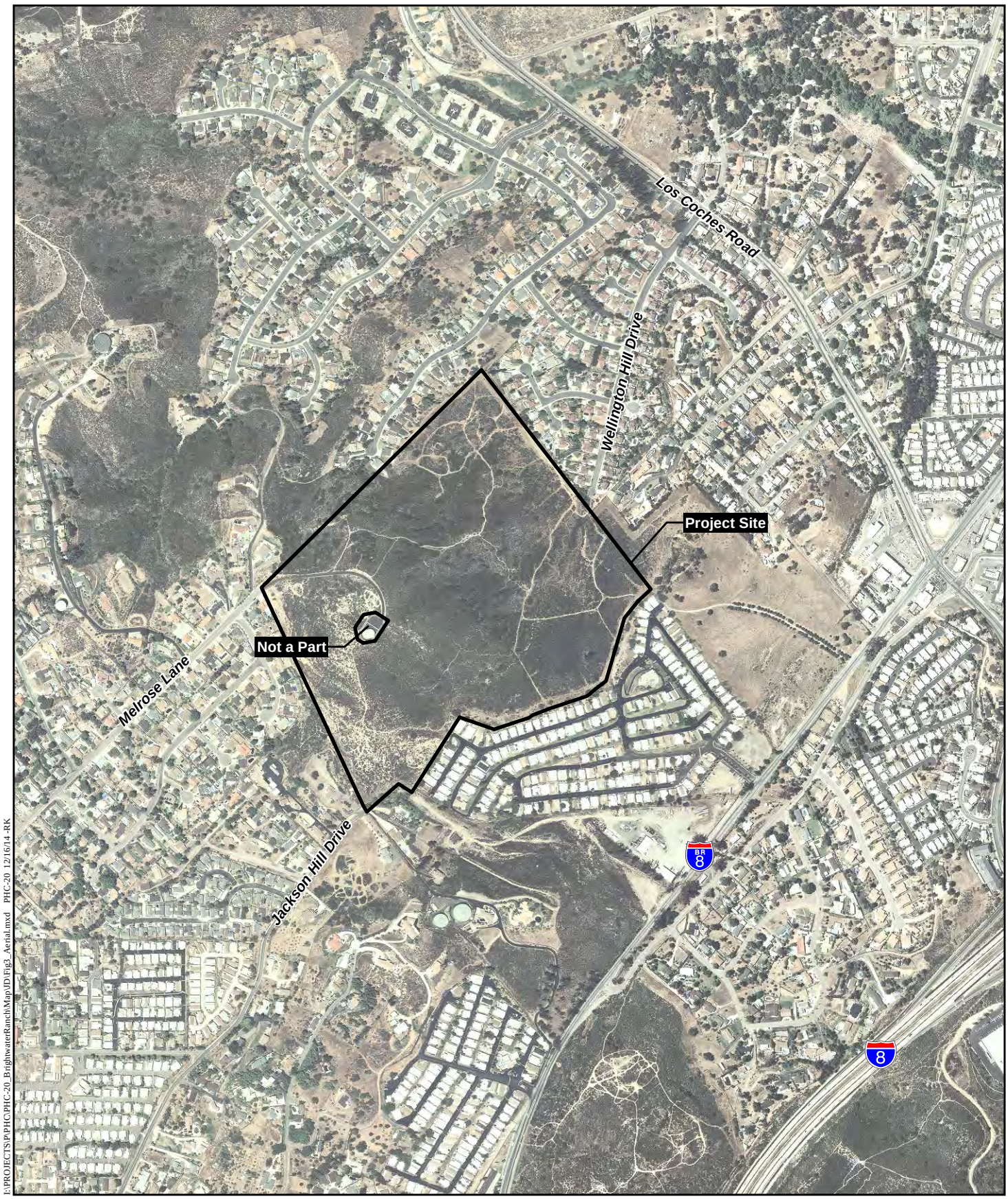
Project Vicinity Map

BRIGHTWATER RANCH

HELIX Environmental Planning

N 0 2,000 Feet

Figure 2



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Survey Area

BRIGHTWATER RANCH

HELIX Environmental Planning

N 0 800 Feet

Figure 3

Project Site
Culverts
Photo Location
Site Number

Waters of the U.S. and State (USACE and RWQCB)

Non-wetland Waters (Unvegetated Ephemeral Dry Wash) - 0.114 acre, 2272 linear ft

Waters of the State, Exclusively (RWQCB)

Swale/Erosive Feature - 0.063 acre, 2755 linear ft

Ridgeton Drive
Castle Brook Court
Wellington Hill Drive
Cement-lined Brow Ditch (Non-jurisdictional features)
Not a Part
Accelerated gully erosion from residential runoff and uncommon storm events (≥100 year event)
Point of abatement and sheetflow

1
2
3
1'
2'
3'
5'

USACE/RWQCB Jurisdiction

BRIGHTWATER RANCH

HELIX Environmental Planning

N 0 200 Feet

Figure 4

I:\PROJECTS\P\PHC\PHC-20_BrightwaterRanch\Map\JD\Fig4_USACE_JD.mxd PHC-20 08/03/15 -RK

Project Site
Culverts
Photo Location
Site Number

CDFW Jurisdiction

Unvegetated Streambed - 0.17 acre, 4395 linear ft
Vegetated Streambed - 0.11 acre

Castle Brook Court
Wellington Hill Drive
Ridgeton Drive

Cement-lined Brow Ditch
(Non-jurisdictional features)

Accelerated gully erosion from residential runoff and uncommon storm events (≥100 year event)

Point of abatement and sheetflow

Not a Part

1
2
3
1'
2'
3'
5'

I:\PROJECTS\P\PHC\PHC-20_BrightwaterRanch\Map\JD\Fig5_CDFW_JD.mxd PHC-20 08/03/15 - RK

CDFW Jurisdiction

BRIGHTWATER RANCH

HELIX Environmental Planning

N 0 200 Feet

Figure 5

Photograph 1: Looking southwest at close-up of swale/erosive feature.
Note gully type erosion (angular and blocky) and vegetation and duff populating this feature indicating irregular surface flow.

Photograph 2: Looking northeast at underdeveloped OHWM
(as a result of the confluence of two swale/erosive features. Note discontinuous OHWM, vegetation occupying feature, and culvert in the background.

Photograph 3: Looking southwest at close-up of discontinuous swale/erosive feature. Note gully type erosion (angular and blocky) and vegetation and duff populating this feature indicating irregular surface flow.

Photograph 4: looking southwest at underdeveloped OHWM prior to entering offsite culvert intake.

Photograph 5: looking north at underdeveloped OHWM prior to entering offsite culvert intake.

Photograph 6: Looking south at close-up of swale/erosive feature. Note gully type erosion (angular and blocky) and vegetation and duff populating this feature indicating irregular surface flow.

Photograph 7: Looking northwest at small ephemeral dry wash feature near northern boundary of survey area.

Photograph 8: Looking north at large gully populated by desertbroom (Baccharis sarothroides) and supporting small unvegetated ephemeral dry wash at bottom of gully. Gully was created by a large storm event and residential runoff.

Photograph 9: Looking south at large gully populated by desertbroom and supporting small unvegetated ephemeral dry wash at bottom of gully.

ATTACHMENT B

PRELIMINARY JD FORM

PRELIMINARY JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers
Brightwater Ranch Jurisdictional Delineation Letter Report and Preliminary Jurisdictional Determination
Lakeside (unincorporated area), San Diego County, California

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): December 20, 2014, Revised October 19, 2015

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Mr. Sohail Bokhari
Director of Planning & Engineering
Pulte Home Corporation
27101 Puerta Real, Suite 300
Mission Viejo, CA 92691

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District Regulatory Division, Los Angeles Section, South Coast Branch, Carlsbad Field Office

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

Please refer to the Summary and Introduction in the Brightwater Ranch Jurisdictional Delineation Report (JDLR).

(Use the attached table to document multiple waterbodies at different sites)
State: CA County/parish/borough: San Diego County City: N/A (Lakeside)
Center coordinates of site (lat/long in degree decimal format): Lat: 32.832479 Long: -116.914554
UTM: 11N507980.45.84 m E 3632711.94 m N
Name of nearest waterbody: Los Coches Creek (which is a tributary to the San Diego River)
Identify (estimate) amount of waters in the review area 0.114 acre
Non-wetland waters: 0.114 acre
Cowardin Class: Riverine
Stream Flow: Ephemeral
Wetlands: N/A
Cowardin Class: N/A
Name of any waterbodies on the site that have been identified as Section 10 waters: None
Tidal:
Non-Tidal:

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date:
☒ Field Determination. Date(s): 11-07-14, 7-1-15

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked
and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: See Figures 1 through 5 in Attachment A of the JDLR
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant. N/A
  ☐ Office concurs with data sheets/delineation report.
  ☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
  ☒ USGS NHD data.
  ☒ USGS 8 and 12 digit HUC maps.
  ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5' U.S. Geologic Service (USGS) El Cajon (1975) topographic quadrangle

☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey.
☒ National wetlands inventory map(s). Cite name: NWI Website.
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): 2012 Aerial Maps of the survey area (USDA 2012)

☒ Other (Name & Date
☐ Previous determination(s). File no. and date of response letter: .
☒ Other information (please specify): Please review the JDLR for this project.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

October 19, 2015

Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining
the signature is impracticable)

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Appendix A – Sites

District Office: **Carlsbad** File/ORM # PJD Date: **October 19, 2015**
State: **CA** City/County: **Lakeside/San Diego**

Person Requesting PJD: **Mr. Matthew Souttere, City of Escondido**

Site Number	Latitude	Longitude	Cowardin Class	Estimated Amount of Aquatic Resource in Review Area (in acres)	Class of Aquatic Resource
1	32.834655	-116.913927	Riverine	0.009	Non-Section 10 Non-Wetland
2	32.833127	-116.912492	Riverine	0.013	Non-Section 10 Non-Wetland
3	32.830705	-116.912509	Riverine	0.092	Non-Section 10 Non-Wetland
Total 0.114 acre					