

Appendix A

Chronology of Events: Settler's Point/Brightwater Ridge Projects

February 2006: The property owner of the Settler's Point Property (Centex Homes) is provided a revised *Biological Technical Report for Settler's Point Subdivision and Rezone* (prepared by RC Biological Consulting) for the proposed subdivision of a 22.4 acre parcel into 3 residential lots (one single-family residential lot, one HOA lot, and one multi-family condominium development). The stated purpose of the report was to conduct general biological surveys and sensitive plant surveys to document the property's existing condition, to provide an impact analysis based on the current project design, and to identify mitigation measures for the project to reduce those impacts below a level of significance.

The proposed property boundaries at the time contained no jurisdictional waters onsite, so the report did not address the need to perform jurisdictional delineations, or suggest that any permits were necessary for impacts to jurisdictional waters. The report did include rudimentary vegetative mapping 100 feet outside of the property boundary (see Figure 1) which noted the presence of coastal sage scrub habitat in a depressional feature that was the area of what would become the off-site street knuckle portion of the project.

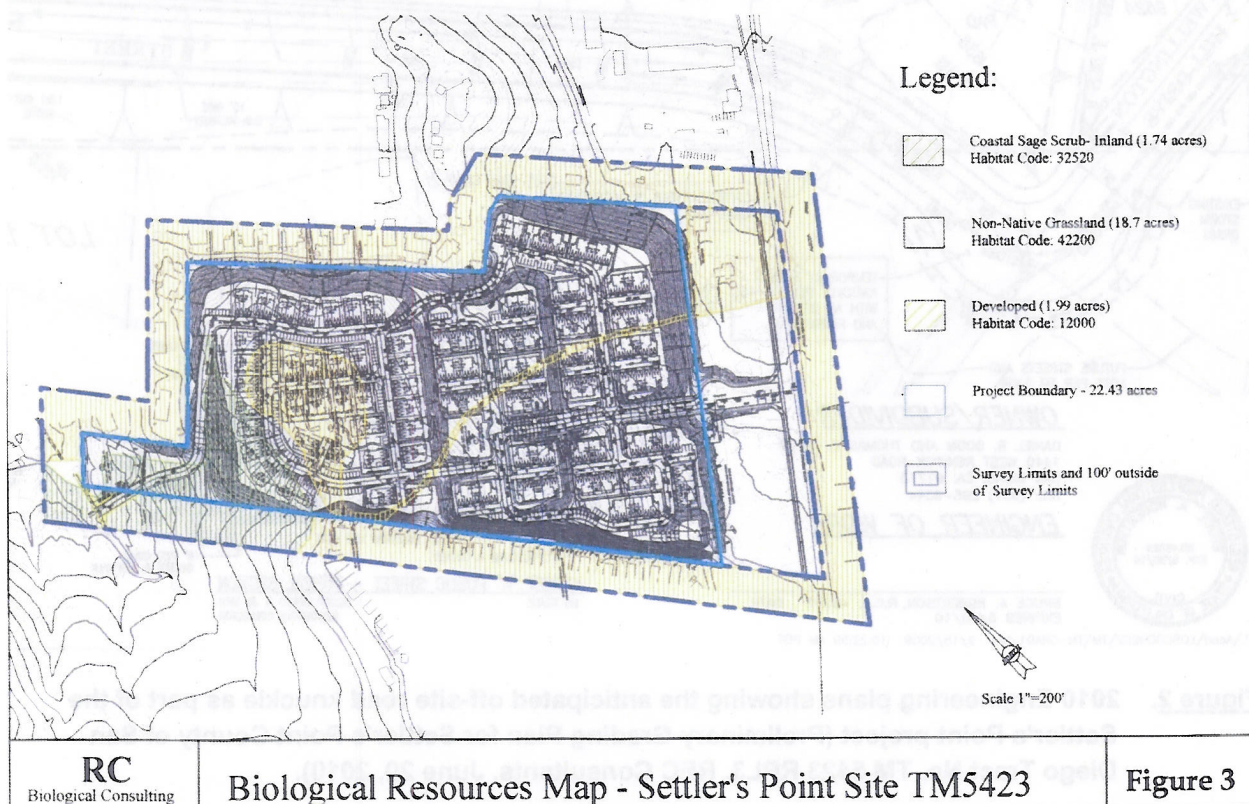


Figure 1. 2006 Biological Resources map prepared by Robin Church. Biological Technical Report for Settler's Point Subdivision and Rezone (RC Biological Consulting).

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August 2008: At the request of the County of San Diego, an offsite addition is made to the Settler's Point project. The County requested a "temporary street knuckle" to be constructed at the northwest corner of the Settler's Point project (see Figure 2). The street knuckle was requested to provide secondary access to the Settler's Point project and connect the proposed onsite road to Wellington Hills Drive. The fire protection plan for the project required the project to have two way access and no dead end roads.

The offsite street knuckle was located on the adjacent Brightwater Ranch property. The street knuckle was deemed "temporary" because both the Settler's Point and Brightwater Ranch projects were working their way through the approval process independently, and it was unknown which project would receive approval to break ground and build the road first.

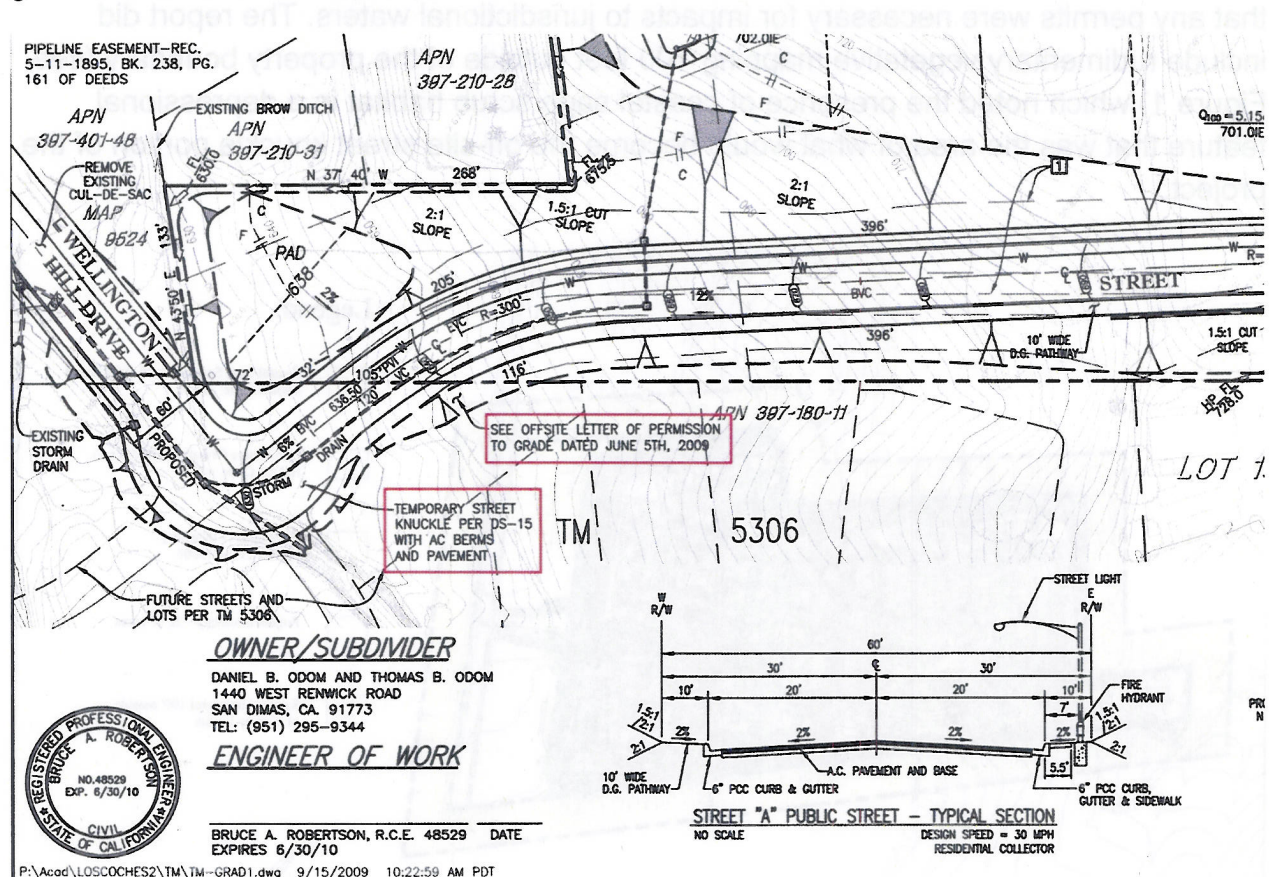


Figure 2. 2010 Engineering plans showing the anticipated off-site road knuckle as part of the Settler's Point project (Preliminary Grading Plan for Settler's Point County of San Diego Tract No. TM 5423 RPL3, REC Consultants, June 20, 2010).

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January 5, 2009: REC Consulting provides the County of San Diego with an updated project description letter for the Settler's Point project on behalf of the Odom Trust (now owner of the Settler's Point property). The project updates consist of slight boundary adjustments (to a project size of 21.89 acres) and subdivision into four residential lots with a total of 266 residential units. Construction of the off-site road knuckle is acknowledged in the report, and slight project adjustments were made to address the anticipated coastal sage scrub impacts. REC Consulting relied exclusively on the 2006 RC Biological Consulting Biological Technical Report to document the potential impacts to resources, and unfortunately determined that:

"The original findings, impacts and mitigation recommendations remain largely the same, and do not necessitate the drafting of a new report. At this time no additional field work will be conducted."

June 2009: On behalf of the Odom Trust, REC Consulting prepares a Drainage Study for the Settlers Point project. The purpose of this study was to obtain the pre-project and post-project peak runoff rates resulting from the 100-year 6-hour storm. This is one of the first reports that incorporate the offsite street knuckle into the project. While the January 2009 REC Consulting biological update found the addition of the knuckle to be insignificant, the REC Consulting engineers that were looking at the flow of water onto and off of the site recognized the existence of a natural creek directly off-site. Section 3.1 of the drainage study noted:

"Most of the runoff to the north is conveyed by existing concrete ditches. Other areas runoff sheet flows over existing slopes that eventually drain into the existing streets and **ultimately into a natural creek at the northwest corner.**"

Had the engineering wing and biological wing of REC Consulting communicated better on their respective evaluations of the project site, it is possible that the existence of the natural creek would have precipitated further field work to ascertain the existence of jurisdictional features.

June 5, 2009: Centex Homes (now owner of the adjacent Brightwater Ranch property) provides the Odom Trust a letter of permission to conduct the off-site grading of the street knuckle.

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February 12, 2012: The County of San Diego, acting as lead agency under CEQA issues the CEQA Initial Study and Draft Mitigated Negative Declaration for the Settler's Point project. In reviewing the Biological Resources impacts, the County relied on a desktop analysis of the County's Geographical Information System (GIS), the County's Comprehensive Matrix of Sensitive Species, site photos, and the 2006 Biological Technical Report. Had County staff taken more care in this desktop review, aerial photographs could have alerted them to the presence of jurisdictional streams directly off-site in the footprint of the proposed road knuckle (see Figure 3).



Figure 3. September 2010 Google Earth Aerial photograph

Building upon the errors of the past, and utilizing prior inadequate evaluations of the proposed project impacts, the County determined in the Initial Study that the proposed project would have less than significant impact in substantially altering existing drainage patterns through the alteration of the course of a stream.

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Chronology of Events: Settler's Point/Brightwater Ridge Projects

March 19, 2013: REC Consulting provides another updated project description to the County of San Diego due to the acquisition of additional parcels. Again, they determined that no biological field work was deemed necessary for the update, relying on the 2006 Biological Technical Report and the 2009 updated project description.

May 2014: KB Home began purchase discussions for the Settler's Point property. The project was marketed as having all environmental approvals and required permits to begin construction.

May 9, 2014: Helix Environmental provides KB Home with a Due Diligence Assessment for the Settler's Point project. The assessment was based on a site reconnaissance on May 5, 2014 by a Helix biologist, a review of project files provided by KB Home, and regional planning documents¹. The focus of this assessment was "to confirm that no significant changes or biological issues have occurred since project approvals and there are no constraints to development."

The May 5, 2014 site visit by a Helix biologist was the first time since 2006 that a site visit was conducted on the Settler's Point property to investigate the environmental impacts of the proposed project. It was KB Home's best opportunity to investigate the offsite impacts, but the Helix biologist only walked the original property boundary and did not review the offsite portion of the project.

August 12, 2014: KB Home submits a Notice of Intent (NOI) to the State Water Resource Control Board to obtain coverage under Statewide Construction Stormwater Permit. Included in the submittal was an August 8, 2014 Stormwater Pollution Prevention Plan (prepared by Waterlogged Consulting) which noted in the *Existing Condition Drainage Map Sheet 1 of 2* the presence of a "natural watercourse" in the off-site area that would become the road knuckle (see Figure 4). Again, the engineers were able to identify that the offsite road knuckle footprint contained natural streams.

¹ Resources reviewed included: 1) Biological Resources Report for Settler's Point. Robin Church. February 2006. 2) Biological Resources Report and Updated Project Description. REC Consultants. January 5, 2009. 3) Biological Resources Report and Updated Project Description. REC Consultants. March 19, 2013. 4) Initial Study for the Settler's Point Project. County of San Diego. February 10, 2012. 5) Final Negative Declaration for the Settler's Point Project. County of San Diego. February 10, 2012.

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Chronology of Events: Settler's Point/Brightwater Ridge Projects

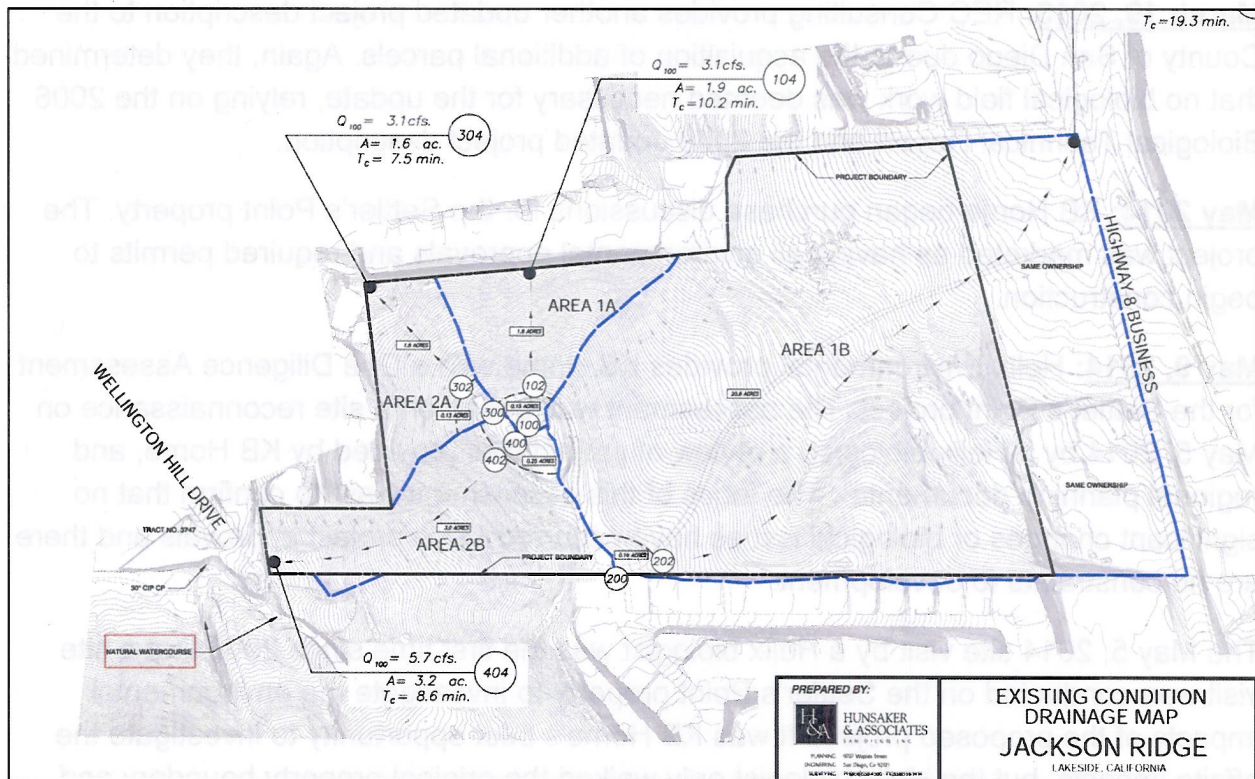


Figure 4. Drainage map from KB Home SWPPP showing location of natural watercourse (Storm Water Pollution Prevention Plan for Settler's Point Risk Level 2, Waterlogged, Certified Storm Water Professionals, August 8, 2014)

September 2, 2014: KB Home closes escrow on Settler's Point property.

November 7, 2014: Helix Environmental staff, on behalf of Pulte Home Corporation conducts a preliminary jurisdictional delineation of the Brightwater Ranch property. The preliminary work concludes that jurisdictional waters are present on site, including in the area of the proposed road knuckle. The Helix employee working on the Pulte Home Corporation delineation was a different person from the Helix staff hired by KB Home to perform the Due Diligence Assessment for the adjacent Settler's Point property. Unfortunately, there was no inter-office communication between them regarding the findings of the preliminary delineation (see Figure 5).

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Chronology of Events: Settler's Point/Brightwater Ridge Projects

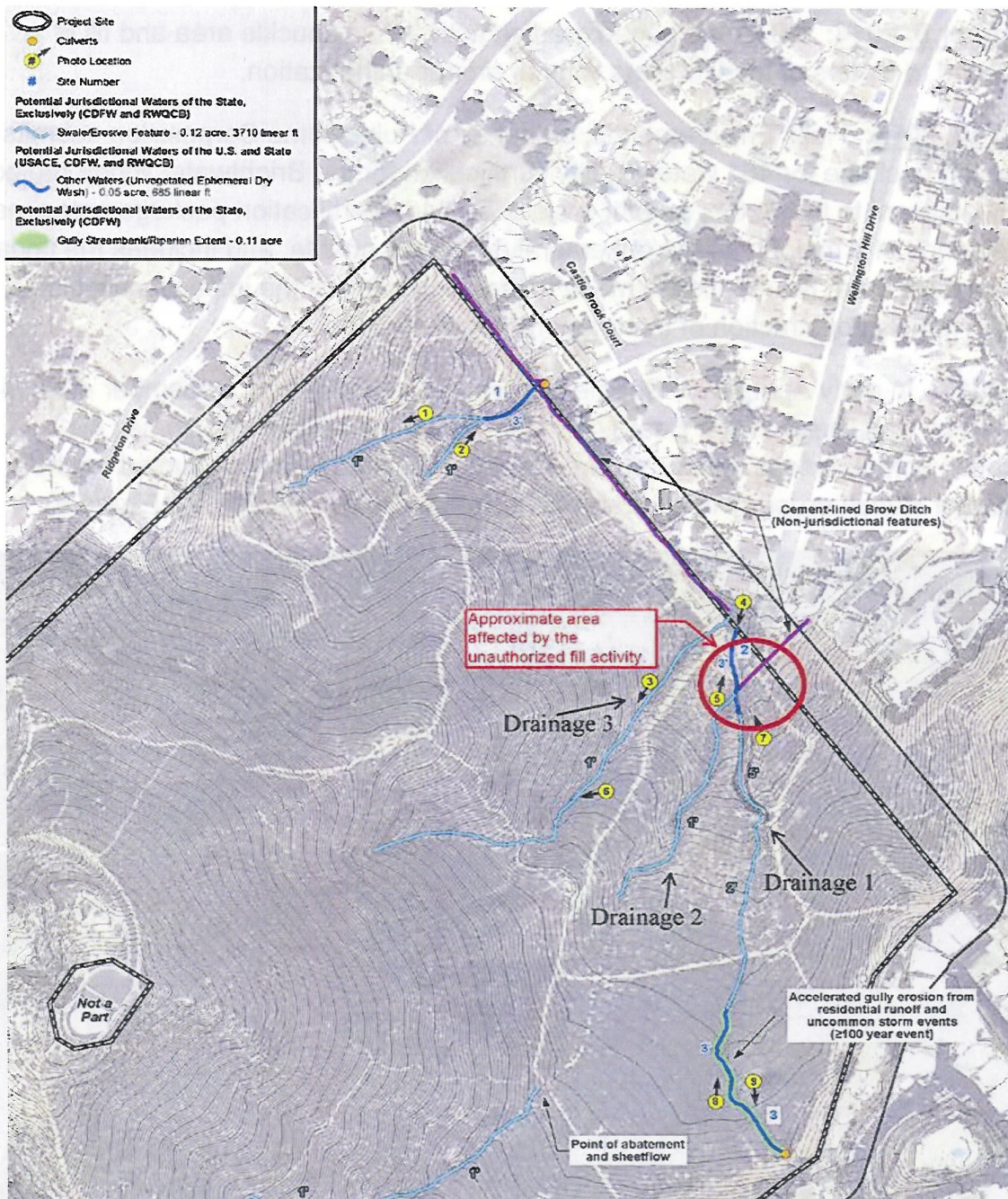


Figure 5. Preliminary jurisdictional delineation performed on November 7, 2014 by Helix Environmental Planning for Pulte Homes Brightwater Ridge Project.

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Chronology of Events: Settler's Point/Brightwater Ridge Projects

December 5, 2014: KB Home began grading activities in knuckle area and fill is discharged to waters of the US/State without proper authorization.

March 10, 2015: Helix Environmental, on behalf of Pulte Home Corporation submits an application package for 401 water quality certification for the Brightwater Ridge project, directly adjacent to the Settler's Point project. The 401 certification package proposes no avoidance of a majority of the ephemeral drainages on-site, and includes the impacts to the knuckle area. No mention is made in the application of the impacts associated with KB Home's construction of the temporary road knuckle.

April 2015: In early April 2015, Google Earth aerial imagery from December of 2014, reviewed by San Diego Water Board 401 staff during the initial Pulte Homes 401 application completeness review, showed that grading had been conducted on the Brightwater Ranch property in an area with jurisdictional resources (see Figure 6).



Figure 6. December 2014 Google Earth photo of initiation of grading activity for off-site road knuckle.

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May 14, 2015: Curb, gutter and paving work are completed, ending active discharge of fill to waters of the US/State on Brightwater Ranch Property.

July 1, 2015: San Diego Water Board staff conduct initial inspection of Brightwater Ridge site, accompanied by staff from the Army Corps of Engineers, County of San Diego, KB Home, Pulte Homes and Helix Environmental Planning.

August 13, 2015: San Diego Water Board issues NOV R9-2015-0120 to KB Home and Pulte Home Corporation.

Appendix B

Economic Benefit Analysis

KB Brightwater

Compliance Action	Capital Investment			One-Time Non-Depreciable Expenditure			Annual Cost			Non-Compliance	Compliance	Penalty Payment	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?	Amount	Basis	Date	Delayed?	Amount					
Failure to retain permitting consultant		ECI	1/1/2015	Y	\$ 23,500.00	ECI	10/19/2015	N		12/4/2012	6/22/2016	6/22/2016	7.40%	\$ 16,889
Purchase of creation credits		ECI	1/1/2015	Y	\$ 28,750.00	GDP	9/30/2015	N		3/4/2015	6/22/2016	6/22/2016	7.20%	\$ 18,491
401 Certification Application fee		ECI	1/1/2015	Y	\$ 4,649.00	GDP	2/10/2016	N		12/4/2013	6/22/2016	6/22/2016	7.50%	\$ 3,221
Total Benefit: \$ 38,601														

Income Tax Schedule: Corporation Version 5.5.0 (July 2015) Analyst: Bryan Elder Date/Time of Analysis: 3/14/2016 8:41

USEPA BEN Model Version: Assumptions:

- 1 Consulting estimates for permitting obtained by RWOCB SD ranged from \$15,000 to \$32,000. An average expense of \$23,500 was used as the avoided cost. It is assumed that a consultant would have been retained at least two years prior to impacts.
- 2 Based on last bank purchase (prorated to our acreage estimate) for purchase of 0.05 creation credits at SLR Bank at approximately 3:1 ratio. Purchase must be complete within 90 days of impacts.
- 3 401 certification application fee is required at least one year prior to impacts.
- 4 Streambed impacts were estimated at commencing on 12/4/2014
- 5 Costs are assumed to be avoided
- 6 Penalty payment date estimated as tentative hearing date and is subject to change

Appendix C
Discharger: KB Home

Penalty Methodology Table
Order No. R9-2016-0092

Step 1: Potential Harm Factor				
Violations	Potential Harm to Beneficial Uses [0 - 5]	Physical, Chemical, Biological or Thermal Characteristics [0 - 4]	Susceptibility to Cleanup or Abatement [0 or 1]	Total Potential for Harm [0 - 10]
Discharge of Fill	5	2	0	7

Step 2: Assessments for Discharge Violations					
Days of Violation	Per Gallon Factor				Statutory/ Adjusted Max per Gallon [\$]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	Gallons	Gallon and Per Day Factor	
161	7	major	69,691	0.31	\$10.00

Step 3: Per Day Assessments for Non-Discharge Violations				
Violations	Per Day Factor			Statutory/ Adjusted Max [\$]
	Potential for Harm [0 - 10]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	
na	na	na	na	na

Step 4: Adjustments					
Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Multiple Day Violations
	1.2	1	1	no	yes

Step 5: Total Base Liability Amount
Sum of Steps 1- 4
\$858,170

Step 6: Ability to Pay/Continue in Business
[Yes, No, Partly, Unknown.]
Yes

Step 7: Other Factors as Justice May Require	
Costs of Investigation and Enforcement Adjustment	Other
\$16,996	na

Step 8: Economic Benefit
\$38,601

Step 9	
Minimum Liability Amount	Maximum Liability Amount
\$41,383	\$2,306,910

Step 10: Final Liability Amount
\$875,166

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
WATERSHED PROTECTION PROGRAM

SECTION 401 WATER QUALITY CERTIFICATION
INSPECTION REPORT

FACILITY: A. Brightwater Ranch, Lakeside CA INSPECTION DATE/TIME: 07/01/2015; 9:00 am
B. Settler's Point/Jackson Ridge, Lakeside CA

SITE WDID No.: A. 9 000002822
B. 9 37C370552

CIWQS Place ID No.: A. 813830

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

Lisa Honma, Nicole Gergans, and Leah Anderson (SDRWQCB), Melanie Tymes (USACE), Beth Ehsan
(County of San Diego), Karl Osmundson and Joshua Zinn (Helix Environmental Planning representing
Pulte Home Corporation, Brightwater Ranch), Kurt Bausback (KB Homes, Settler's Point/Jackson Ridge),
and Barry Jones (Helix Environmental Planning representing KB Homes, Settler's Point/Jackson Ridge).

A. Sohail Bokhari, Director
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

27101 Puerta Real, Ste. 300 Mission Viejo 92691
OWNER MAILING ADDRESS

(949) 330-8537
OWNER CONTACT NAME AND PHONE #

Pulte Home Corporation
FACILITY OR DEVELOPER NAME (if different from owner)

Brightwater Ranch, Terminus of Wellington Hill Dr.
FACILITY ADDRESS

B. Ron Mertz, VP of Land and Planning
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

36310 Inland Valley Drive, Wildomar, CA 92131
OWNER MAILING ADDRESS

Kurt Bausback (KB Home Coastal, Inc.) (858) 877-4262
OWNER CONTACT NAME AND PHONE #

KB Home
FACILITY OR DEVELOPER NAME (if different from owner)

Wellington Hill Dr. & Jackson Hill Parkway
FACILITY ADDRESS

C. County of San Diego, Dept. of Planning and Land Use
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

5510 Overland Ave. Ste. 310 San Diego 92123
OWNER MAILING ADDRESS

Beth Ehsan, (858) 694-3103
OWNER CONTACT NAME AND PHONE #

N/A
FACILITY OR DEVELOPER NAME (if different from owner)

N/A
FACILITY ADDRESS

Facility: Brightwater Ranch, Lakeside CA
Inspection Date: 07/01/2015

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|--|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input type="checkbox"/> CONSTRUCTION GENERAL PERMIT REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input checked="" type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- ☐ "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- ☒ "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- ☐ NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ☐ ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- ☐ COMPLAINT--INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- ☐ PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- ☐ COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:

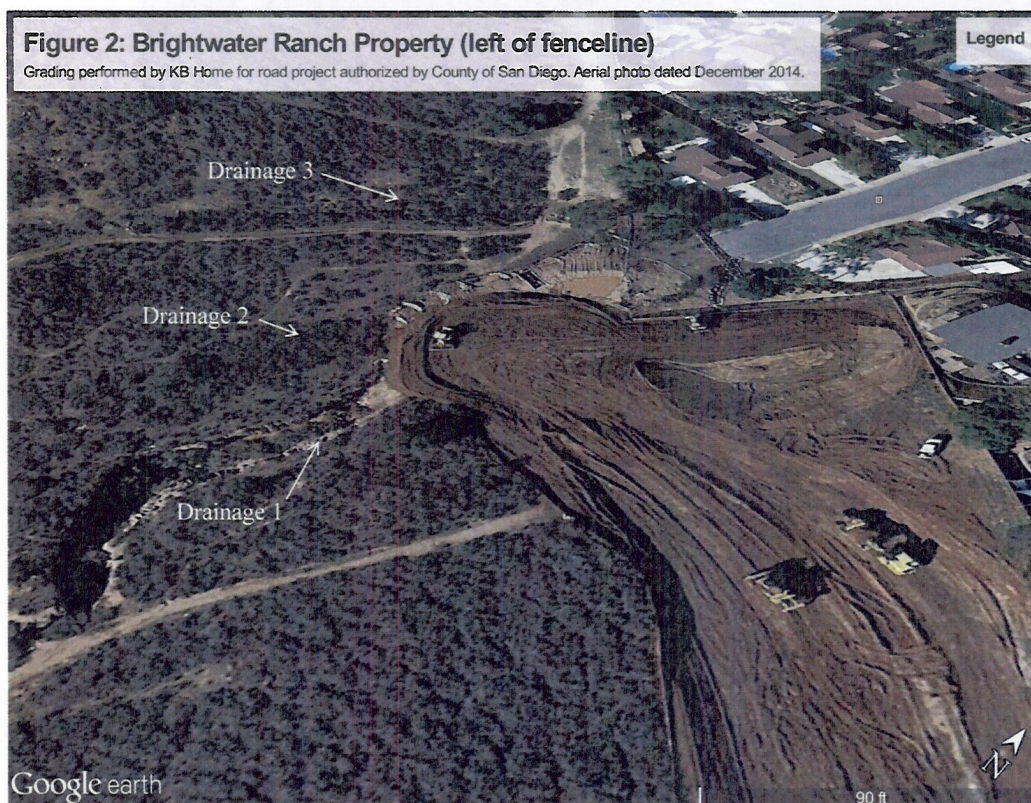
Y WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

I. COMPLIANCE HISTORY / PURPOSE OF INSPECTION

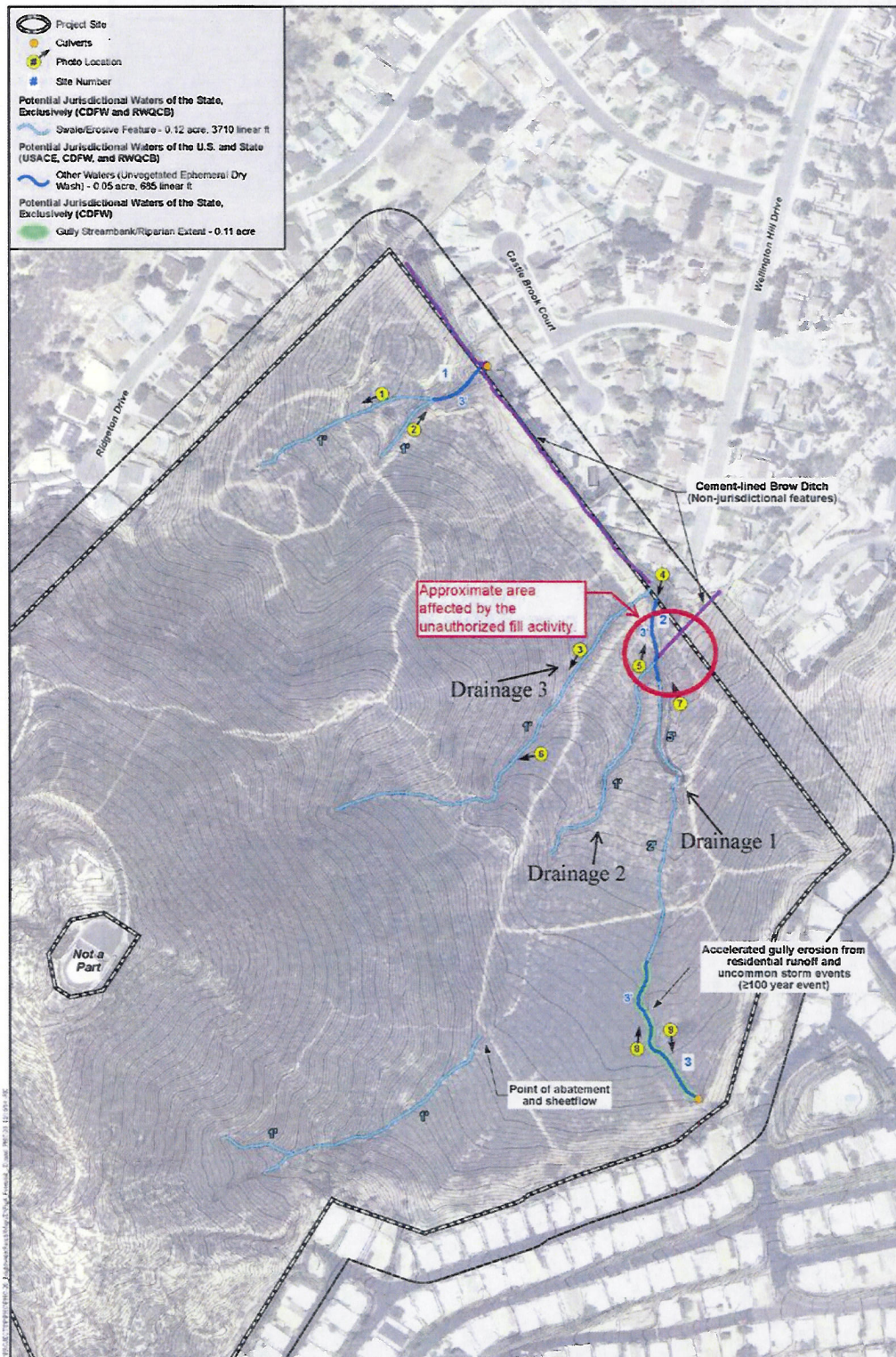
The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has received a CWA Section 401 Water Quality Certification application for Pulte Home Corporation's Brightwater Ranch Residential Housing Development Project (File No. R9-2015-0052). The 76.23-acre project site contains five unnamed ephemeral streams that drain to Los Coches Creek (after passing through an existing storm drain system along Wellington Hill Drive) in the San Diego Hydrologic Unit, Lower San Diego Hydrologic Area, Coches Hydrologic Subarea (907.14). The purpose of the site inspection was to (1) verify Brightwater Ranch's preliminary jurisdictional delineation with the Army Corps of Engineers and (2) meet with representatives of KB Home, Pulte Home Corporation, and the County of San Diego to discuss the unauthorized fill of waters of the U.S. and/or State on the Brightwater Ranch property.

In early April 2015, Google Earth aerial imagery, reviewed during the initial application completeness review, showed that grading had been conducted on the Brightwater Ranch property in an area with jurisdictional resources some time between May 11, 2014 and December 22, 2014. Figures 1 and 2, below, present the Google Earth aerial images of the property line between Brightwater Ranch and KB Home's adjacent Settler's Point project in May 2014 and December 2014. Figure 3 is a map showing the preliminary jurisdictional delineation of the waters of the U.S. and/or State performed on November 7, 2014 by Joshua Zinn of Helix Environmental Planning and submitted to the San Diego Water Board as part of Brightwater Ranch's 401 certification application on March 10, 2015.

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Facility: Brightwater Ranch, Lakeside CA
 Inspection Date: 07/01/2015



Waters of the US/Waters of the State

BRIGHTWATER RANCH

Facility: Brightwater Ranch, Lakeside CA
 Inspection Date: 07/01/2015

KB Home's Settler's Point project reportedly started grading in December 2014 and has enrolled in the Statewide General Construction Storm Water Permit (GCP)(WDID 9 37C370552) as a Risk Level 2, but did not have a CWA Section 401 Water Quality Certification. In compliance with the GCP, KB Home had submitted a Storm Water Pollution Prevention Plan (SWPPP), dated August 8, 2014. Figures included in the SWPPP illustrate the existing site drainage (Figure 4, below) and the off-site road knuckle connecting the main road of the Settler's Point/Jackson Ridge Project to Wellington Hill Drive (Figure 5, below).

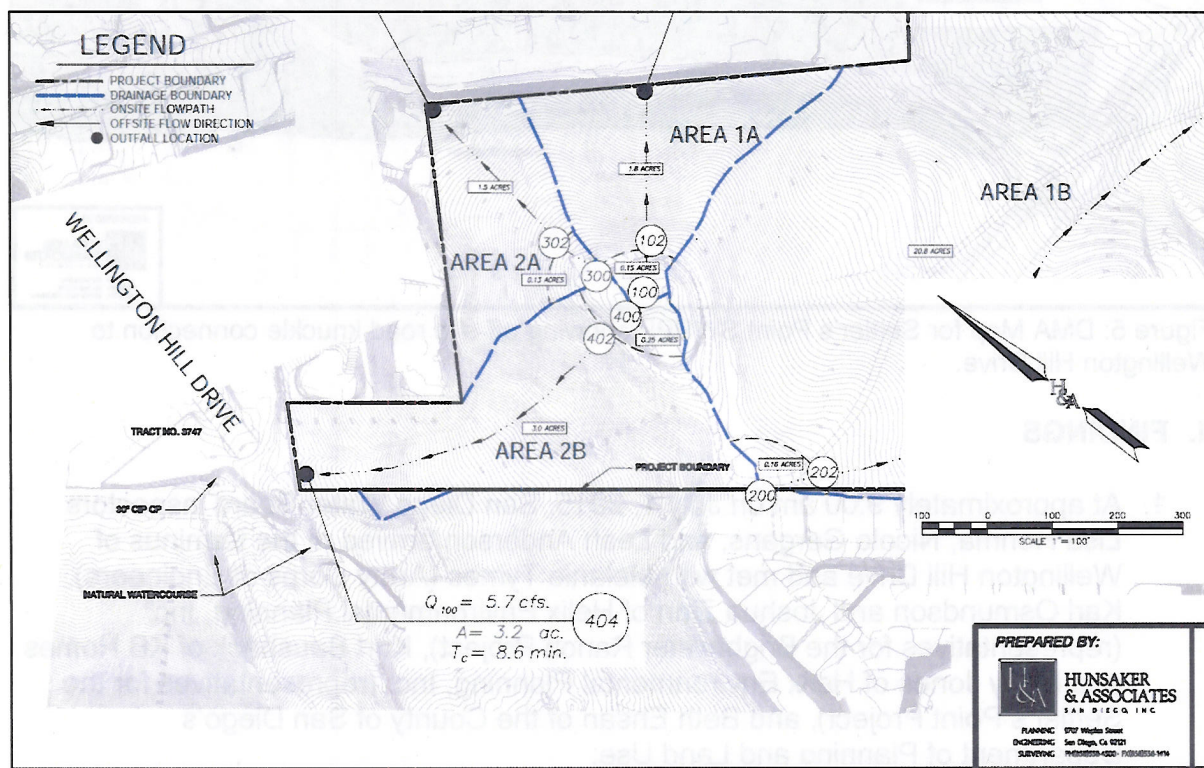


Figure 4: Excerpt of Existing Condition Drainage Map from KB Home's Settler's Point SWPPP. Note that "natural watercourses" are identified on the map in the lower left corner.

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Figure 5: DMA Map for Settler's Point SWPPP showing off-site road knuckle connection to Wellington Hill Drive.

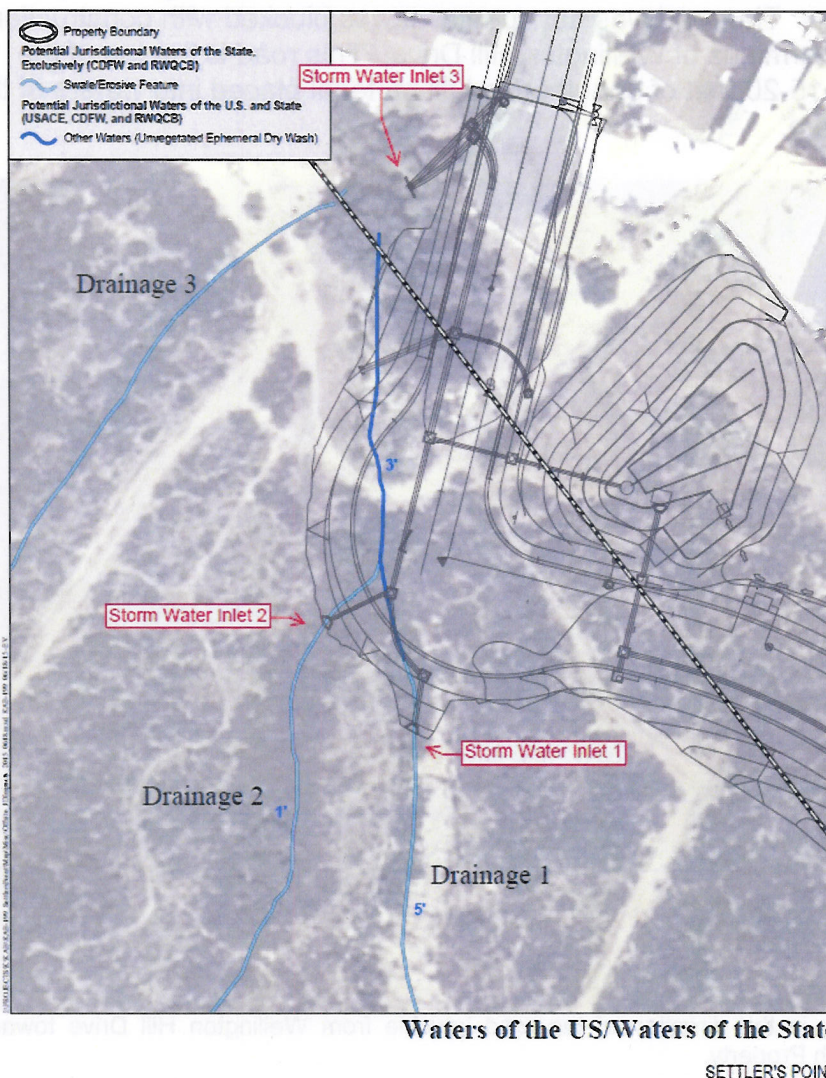
II. FINDINGS

1. At approximately 9:00 am on July 1, 2015, San Diego Water Board inspectors Lisa Honma, Nicole Gergans, and Leah Anderson arrived at the terminus of Wellington Hill Drive and met with Melanie Tymes (Army Corps of Engineers), Karl Osmundson and Joshua Zinn of Helix Environmental Planning, Inc. (representatives for the Brightwater Ranch Project), Kurt Bausback of KB Homes and Barry Jones of Helix Environmental Planning, Inc. (representatives for the Settler's Point Project), and Beth Ehsan of the County of San Diego's Department of Planning and Land Use.
2. Representing KB Home, Barry Jones stated that Helix surveyed the Settler's Point Site and reviewed the biological assessment report for the road knuckle prior to construction insuring that KB Home had met their permitting requirements. Mr. Jones indicated that no jurisdictional features had been identified in those reports.
3. Kurt Bausback stated that KB Home had purchased the Settler's Point project assuming that all appropriate permits had been applied for and received by the previous owner. Mr. Bausback also stated that the County of San Diego required KB Home to build the road connection to Wellington Hill Drive, including the road knuckle.
4. Beth Ehsan confirmed that the County of San Diego required modification of the Settler's Point project to include off-site (on Brightwater Ranch property) construction of the road knuckle. As a result, the County of San Diego initiated

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supplemental mapping that was performed by a different contractor from the initial site surveys. The contractor reported that the expanded footprint contained coastal sage scrub. Ms. Ehsan added that the report did not indicate that there were jurisdictional features present.

5. KB Home, Pulte Home Corporation, and the County of San Diego representatives acknowledged their responsibilities for grading activities in the grading of the road knuckle.
6. Mr. Jones provided a handout illustrating the area of impact to jurisdictional waters of the U.S. and/or State from the construction of road knuckle (Figure 6).



HELIX
Environmental Planning



Figure 6: Map of impacts to jurisdictional resources on the Brightwater Ranch Property. Note that storm water inlets were installed to intercept flow from ephemeral drainages. Also note that the delineation is preliminary and has not been verified by the Army Corps.

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7. Mr. Jones estimated that 0.018 acre and less than 300 linear feet of jurisdictional waters of the U.S. and/or State had been filled as a result of the road knuckle construction.
8. San Diego Water Board staff then walked the site to observe the unauthorized fill and impacts to ephemeral streams, as well as complete the site visit to verify the preliminary jurisdictional delineation for the Brightwater Ranch Project.
9. Photo 1 presents the road knuckle as it appeared on July 1, 2015; it was paved with curbs, gutters, and sidewalks and construction best management practices (BMPs) in place. The road was not open as it was blocked with construction barriers at the terminus of Wellington Hill Drive. This road is the top of the approximately 15-20 feet of unauthorized fill material placed into waters of the U.S. and/or State.



Photo 1: Looking in the direction of the road knuckle from Wellington Hill Drive towards the Brightwater Ranch Property.

10. Beginning with Drainage 1, Photo 2 shows the unauthorized fill and rip rap that has been placed in the waters of the U.S. and/or State prior to a new storm drain inlet (Photo 3). Sediment is visible in the inlet from the previous day's rain event. Photos 1, 2, and 3 all document that KB Home has discharged unauthorized fill into waters of the U.S. and/or State.

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Photo 2: Looking down from the top of the road knuckle into Drainage 1. Melanie Tymes of the Army Corps is approximately 5'4" in height.



Photo 3: Storm water inlet structure installed at the base of the fill in Drainage 1.

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11. At Drainage 2, another storm water inlet was installed to receive flows (Photo 4). Again, rip rap was placed at the toe of the slope and in front of the inlet.



Photo 4: A second storm water inlet structure installed at the base of the fill at Drainage 2.

12. A third storm water inlet structure exists, which previously received flows from all three drainages were protected by rows of sand bags and silt fencing (see Photos 5 and 6). The fence line marks the property boundary. In an email correspondence on July 6, 2015, Ms. Ehsan confirmed that the area to right of the fence line in Photo 6 is on the property of the homeowner at 13106 Wellington Hill Drive.

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Photo 5: The third storm water inlet structure with construction BMPs in place.



Photo 6: Looking down towards location of storm water inlet 3

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13. Army Corps and San Diego Water Board staff were unable to verify the preliminary jurisdictional delineation of aquatic resources within the footprint of the unauthorized fill.
14. The unauthorized discharge of fill, including placement of sediment and rip rap, during road grading activities into unnamed ephemeral drainages on the off-site Brightwater property are discharges of waste to waters of the state and the United States in violation of Water Code sections 13260 and 13376 and waste discharge prohibitions contained in the Basin Plan.

III. RECOMMENDATIONS

1. Pulte Home Corporation and KB Home should cease any additional planned work on the fill area and evaluate removal of the unauthorized fill.
2. Staff will issue a Notice of Violation to responsible parties and will refer further enforcement on this project to the San Diego Water Board's Compliance Assurance Unit.
3. Staff will evaluate the impacts of the unauthorized fill on Pulte Home Corporation's pending 401 Application.

IV. SIGNATURE SECTION

Lisa Honma
STAFF INSPECTOR

SIGNATURE

07/01/2015
INSPECTION DATE

Eric Becker
REVIEWED BY SUPERVISOR

SIGNATURE

07/14/2015
DATE

**California Regional Water Quality Control Board, San Diego Region**

August 13, 2015

**NOTICE OF VIOLATION
No. R9-2015-0120**

Mr. Sohail Bokhari, Director
Pulte Home Corporation
27101 Puerta Real, Ste. 300
Mission Viejo, CA 92691

Mr. Ron Mertz, VP of Land & Planning
KB Home
36310 Inland Valley Drive
Wildomar, CA 92595-7511

**Violations of California Water Code
Section 13260, 13376, and Water
Quality Control Plan for the San Diego
Basin (Basin Plan) Waste Discharge
Prohibitions Nos. 1 and 14**

**Unauthorized discharge of fill to waters
of the U.S./State at Brightwater Ranch,
Lakeside CA, APN # 397-180-13**

In reply refer to: "cmeans:CW-813830"

YOU ARE HEREBY NOTIFIED THAT:

KB Home and Pulte Home Corporation (Pulte Home) (collectively Parties) are in violation of California Water Code (CWC) Section 13260(a) which requires that any person discharging waste or proposing to discharge waste within any region which could affect the quality of the waters of the State shall file a report of waste discharge (ROWD) containing the information that may be required by the regional board. As detailed below, the discharge of dredged or fill material by KB Home into waters of the U.S./State on Pulte Home's Brightwater Ranch property constitutes a discharge of waste that could affect the quality of waters of the State. KB Home did not file a ROWD prior to the initiation of the discharge, and while Pulte Home's application for Section 401 water quality certification may constitute a ROWD, it lacked the appropriate information regarding potential onsite impacts to waters of the US/State that would occur prior to the certification of the project.



Additionally, the Parties are in violation of CWC Section 13376 which prohibits the discharge of fill material, except as authorized by waste discharge requirements or fill material permits (i.e. Clean Water Act (CWA) Section 401 Water Quality Certification, or Certification). The State of California largely relies on Section 401 of the CWA (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to waters of the U.S./State. Section 401 requires an applicant to obtain "Certification" from California that the project will comply with State water quality standards before certain federal licenses or permits may be issued. The permits subject to Section 401 include permits for the discharge of dredged or fill materials (CWA section 404 permits) issued by the U.S. Army Corps of Engineers (USACE). Neither of the Parties received a Section 401 certification prior to the discharge of fill material.

And lastly you are in violation of the Water Quality Control Plan for the San Diego Basin (San Diego Basin Plan), Waste Discharge Prohibitions Nos. 1 & 14, issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).

Such violations subject you to possible enforcement action by the San Diego Water Board including administrative enforcement orders requiring you to cease and desist from violations, clean up waste and abate existing or threatened conditions of pollution or nuisance; pay administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and/or, referral to the District Attorney for criminal prosecution.

A. Background

The proposed Brightwater Ranch project (APN # 397-180-13) is located within the unincorporated community of Lakeside in San Diego County. The 76.23 acre site is located northwest of Business Route 8/East Main Street, and southwest of Los Coches Road (Latitude: 32.832479 ° N, Longitude: -116.914554° W, Center Reading).

Directly adjacent to and northeast of the Brightwater Ranch project site is the KB Home "Settler's Point" residential housing project which comprises approximately 40.6 acres. The Settler's Point project area was purchased by KB Home in September of 2014. Active grading on the Settler's Point project began in December 2014, and construction activities are ongoing.

On March 10, 2015 Pulte Home Corporation submitted a Certification application package for the Brightwater Ranch project to the San Diego Water Board. The proposed project is a 66-unit single-family residential subdivision with four Homeowner Association- maintained lots, and 41.8 acres of open space. The application package included a preliminary jurisdictional delineation for the presence of waters of U.S./State.

The preliminary jurisdictional delineation was conducted on November 7, 2014 and concluded that the site held 0.05 acre (685 linear feet) of jurisdictional waters of the U.S./State (ephemeral dry wash) under the jurisdiction of the USACE, San Diego Water Board, and California Department of Fish & Wildlife (CDFW). The preliminary delineation identified an additional 0.12 acre (3,710 linear feet) of non-federal waters of the State onsite. The 76.23 acre site contains five unnamed ephemeral drainages that are tributary to Los Coches Creek (Hydrologic sub area 907.14).

In April 2015, during an initial San Diego Water Board review of the Pulte Home Corporation certification application, Google Earth aerial imagery revealed that grading had been conducted offsite of the Settler's Point project boundary, and had impacted jurisdictional waters on the Brightwater Ranch Project. On July 1, 2015 staff from the USACE, San Diego Water Board, KB Home, Helix Environmental Planning, and County of San Diego met onsite to inspect the impacts and to verify the jurisdictional delineation.

The findings of the inspection and subsequent correspondences with KB Home and the County of San Diego showed that an offsite road connection had been added to the Settler's Point project sometime in 2008 to provide emergency secondary access to the site. In June 2009 the previous owners of the Brightwater property (Centex Homes) provided a letter of permission to the Settler's Point property owners (The Odom Trust) to grade the offsite "knuckle" portion of the road on their property. The plans and subsequent Biological Report updates and CEQA documents that addressed construction of the Settler's Point project relied primarily on a 2006 Biological Technical Report (RC Biological Consulting) that only addressed the property boundary of the original Settler's Point property, and did not address the presence or absence of jurisdictional waters in the knuckle area.

On July 7, 2015 KB Home's environmental consultant reported that the unauthorized discharge of fill into jurisdictional waters of the U.S./State, associated with the offsite knuckle portion of the Settler's Point project was approximately 0.018 acre (278 linear feet).

B. Violations of CWA Section 13260 and 13376; Unauthorized Fill

1. Failure to provide a Report of Waste Discharge for the Discharge of Fill to Waters of the State.

a. CWC Section 13260 (a)(1) states:

"Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:

- (1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system."

2. Failure to Obtain a CWA Section 401 Water Quality Certification for Impacts to Waters of the US/State

a. CWC Section 13376 states in part:

"A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or a person who discharges dredged or fill material or proposes to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260. Unless required by the state board or a regional board, a report need not be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended..."

"...The discharge of pollutants or dredged or fill material or the operation of a publically owned treatment works or other treatment works treating domestic sewage by any person, except as authorized by waste discharge requirements or dredged or fill material permits, is prohibited."

3. Observations: Dredging, filling, or excavation within waters constitutes a discharge of waste to waters of the U.S./State, and prospective dischargers are required to submit a ROWD to the appropriate Regional Water Quality Control Board and obtain a certification and/or waste discharge requirements.

- a. KB Home discharged fill material into waters of the U.S./State without filing a ROWD or obtaining a Certification for the impacts.
- b. KB Home employed the same environmental consulting firm (Helix Environmental Planning) to ensure that the Settler's Point project complied with KB Home's regulatory responsibilities. KB Home's Stormwater Pollution Prevention Plan (SWPPP) (by Waterlogged Certified Stormwater Professionals) prior to the commencement of construction activities called out the knuckle area drainage features as "natural watercourses."
- c. Pulte Home identified the area of fill at the "knuckle" in their preliminary jurisdictional delineation (conducted by Helix Environmental Planning) and allowed the discharge of fill to occur on their property prior to their obtaining Certification/Waste Discharge Requirements for the fill.

4. **Conclusion:** The Parties did not exercise adequate due diligence prior to commencement of grading and fill at the knuckle area owned by Pulte Home. Had the Parties viewed aerial imagery or topographical maps, conducted a site visit of the offsite impacts, reviewed their own SWPPP, or discussed the preliminary jurisdictional delineation amongst themselves prior to grading, they would have been aware of the presence of a jurisdictional feature. The lack of communication and due diligence by the Parties resulted in the unauthorized discharge of fill to waters of the U.S./State in violation of CWC Sections 13260 and 13376.

C. Violations of Basin Plan Waste Discharge Prohibitions

1. Failure to Comply with Basin Plan Waste Discharge Prohibition No.1

- a. Discharge Prohibition No. 1 states:

"The discharge of waste into the water of the State in a manner causing, or threatening to cause, a condition of pollution, contamination or nuisance as defined in CWC Section 13050, is prohibited."

2. Failure to Comply with Basin Plan Discharge Prohibition No.14

- a. Discharge Prohibition No. 14 states:

"The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom depositions, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited."

3. **Observations:** A discharge of waste including earthen materials has occurred within waters of the State. The discharged material remains in waters of the State. The unnamed drainages are tributaries to Los Coches Creek. Beneficial Uses assigned to Los Coches Creek and its tributaries include Industrial Service Supply (IND), Contact Water Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM) and Wildlife Habitat (WILD). Construction of the project in and over the "unnamed drainages" has negatively impacted, if not eliminated, the Beneficial Uses in that location and resulted in a condition of pollution, contamination or nuisance.


D. Summary of Potential Enforcement Options

Failure to address these violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of up to \$10,000 per violation per day (Water Code section 13350 and 13385) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Technical or Investigative Order	Sections 13267
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

In addition, the San Diego Water Board may consider referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and/or referral to the municipal or District Attorney for criminal prosecution.

Questions pertaining to this Notice of Violation should be directed to Christopher Means at (619) 521-3365 or cmeans@waterboards.ca.gov. Written correspondence pertaining to this NOV should be sent to sandiego@waterboards.ca.gov. In the subject line of any response, please include "**cmeans:CW-813830**."


Chiara Clemente
Senior Environmental Scientist

CMC:cjm

Attachment: June 1, 2015 San Diego Water Board Inspection Report

Tech Staff Info & Use	
Violation ID	994273
Place ID	813830
KB Party ID	358094
Pulte Party ID	556378