



California Regional Water Quality Control Board, San Diego Region

October 12, 2012

Certified Mail - Return Receipt Requested
Article Number: 7011 0470 0002 8961 6497

In reply refer to / attn:
728237;jebesen

Ricardo Jinich
Otay Business Park, LLC
4225 Executive Square, Suite 920
La Jolla, CA 92037

**Subject: Action on Request for Amendment to Clean Water Act Section
401 Water Quality Certification for Otay Business Park Project,
08C-079**

Mr. Jinich:

Enclosed find Clean Water Act Section 401 Water Quality Certification (Certification) for the Otay Business Park Project 08C-079, with acknowledgment of enrollment under State Water Resources Control Board Order No. 2003-017-DWQ, *Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)*. A description of the project can be found in the project information sheet and on location and site maps compiled by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), which are included as Attachments 1 through 7.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the San Diego Water Board, including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability, referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

Mr. Jinich
Otay Business Park
401 Water Quality Certification 08C-079

- 2 -

October 12, 2012

In the subject line of any response, please include the reference number 728237:jebsen. For questions or comments, please contact Ms. Jody Ebsen by phone at 858-636-3146, or by email at jebsen@waterboards.ca.gov.

Respectfully,



DAVID W. GIBSON
Executive Officer
San Diego Regional Water Quality Control Board

DWG:dtb:esb:jme

Enclosure: Clean Water Act Section 401 Water Quality Certification No. 08C-079 Otay Business Park Project, with 7 attachments.

cc: Refer to Attachment 2 of Certification for Distribution List.

Tech Staff Info & Use	
Party (GT/CIWQS) ID	33218
File No.	08C-079
WDID	9000001852
Reg. Measure ID	354166
Place ID	728237

California Regional Water Quality Control Board, San Diego Region

**Action on Request for
Clean Water Act Section 401 Water Quality Certification
and Waste Discharge Requirements
for Discharge of Dredged and/or Fill Materials**

PROJECT: Otay Business Park, Certification Number (08C-079)
WDID: 9 000001852

APPLICANT: Ricardo Jinich
Otay Business Park, LLC
4225 Executive Square, Suite 920
La Jolla, CA 92037

CIWQS
Reg. Meas. ID: 354166
Place ID: 728237
Party ID: 33218

ACTION:

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

PROJECT DESCRIPTION:

The Project is to build an industrial business park in East Otay Mesa on a 161 acre property adjacent to the United States/Mexico international border approximately 0.5 mile east of Enrico Fermi Drive. The Project will divide the site into 59 commercial/industrial lots; two detention basin lots; a 0.2 acre lot set aside for a sewer pump station; and open space to accommodate a realigned stream channel through the site. The project impacts to waters of the United States and/or State include 0.2 acres of ephemeral streams and 0.24 acres of vernal pools. Mitigation for these impacts will be done by 1) on-site ephemeral stream establishment, 2) off-site ephemeral stream preservation; 3) off-site vernal pool restoration and preservation; and 4) restoration of non-wetland waters of the United States and/or State through purchase of mitigation credits at Rancho Jamul Mitigation Bank.

TABLE OF CONTENTS

I. STANDARD CONDITIONS:	3
II. ADDITIONAL CONDITIONS: GENERAL	3
III. ADDITIONAL CONDITIONS: CONSTRUCTION BMPs	5
IV. ADDITIONAL CONDITIONS: POST CONSTRUCTION BMPs	6
V. ADDITIONAL CONDITIONS: COMPENSATORY MITIGATION	8
VI. MONITORING REQUIREMENTS:	11
VII. NOTIFICATION REQUIREMENTS:	12
VIII. REPORTING REQUIREMENTS:	15
IX. CEQA FINDINGS:	17
X. PUBLIC NOTIFICATION OF PROJECT APPLICATION:	18
XI. SAN DIEGO WATER BOARD CONTACT PERSON:	18
XII. WATER QUALITY CERTIFICATION:	19

I. STANDARD CONDITIONS

The following three standard conditions apply to all Certification actions, except as noted under Condition 3 for denials (Action 3).

- A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
- B. This Certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- C. The validity of any non-denial Certification action (Actions 1 and 2) must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

II. ADDITIONAL CONDITIONS: GENERAL

- A. Water Quality Certification No. 08C-079 (Certification) is only valid if the Project begins no later than 5 (five) years from the date of issuance. If the Project has not begun within 5 years from the date of issuance, then this Certification shall expire 5 years from the date of issuance.
- B. The Otay Business Park, LLC must comply with the requirements of State Water Resources Control Board Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material That Have Received State Water Quality Certification*. These General Waste Discharge Requirements are accessible at:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/gowdr401regulated_projects.pdf.
- C. The Otay Business Park, LLC must, at all times, fully comply with the engineering plans, specifications, and technical reports submitted to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), to support this Certification and all subsequent submittals required as part of this Certification and as described in Attachment 1. The conditions within this Certification must supersede conflicting provisions within such plans submitted prior to the Certification action. Any modifications thereto, would require notification to the San Diego Water Board and

reevaluation for individual Waste Discharge Requirements and/or Certification amendment.

- D. During construction, the Otay Business Park, LLC must maintain a copy of this Certification at the Project site so as to be available at all times to site personnel and agencies.
- E. The Otay Business Park, LLC must permit the San Diego Water Board or its authorized representative at all times, upon presentation of credentials:
1. Entry onto Project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 2. Access to copy any records required to be kept under the terms and conditions of this Certification.
 3. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
 4. Sampling of any discharge or surface water covered by this Order.
- F. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
- G. In response to a suspected violation of any condition of this Certification, the San Diego Water Board may pursuant to Water Code sections 13267 and 13383, require the holder of any permit or license subject to this Certification to investigate, monitor and report information on the violation. The only restriction is that the burden, including costs, of preparing the reports must bear a reasonable relationship to the need for, and the benefits to be obtained from, the reports.
- H. In response to any violation of the conditions of this Certification, or if the results of the Project have unintended impacts to water quality, the San Diego Water Board may modify the conditions of this Certification as appropriate to ensure compliance.

III. ADDITIONAL CONDITIONS: CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. Prior to the start of the Project, and annually thereafter, the Otay Business Park, LLC must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response, and Best Management Practices (BMPs) implementation and maintenance.
- B. The Otay Business Park, LLC must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.
- C. The Otay Business Park, LLC must enroll in and comply with the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, NPDES No. CAS000002, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*.
- D. The treatment, storage, and disposal of wastewater during the life of the project must be done in accordance with waste discharge requirements established by the San Diego Water Board pursuant to CWC § 13260.
- E. Discharges of concentrated flow during construction or after completion must not cause downstream erosion or damage to properties or stream habitat.
- F. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or the State or placed in locations that may be subjected to storm flows. Pollutants discharged to areas within a stream diversion area must be removed at the end of each work day or sooner if rain is predicted.
- G. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. Diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.
- H. All areas that will be left in a rough graded state must be stabilized no later than one week after completion of grading. The Otay Business Park, LLC and subsequent owners, are responsible for implementing and maintaining BMPs to prevent erosion of the rough graded areas to prevent flow from this area from causing adverse effects to beneficial uses. After completion of grading, all areas must be revegetated with native

species appropriate for the area. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at: <http://www.cal-ipc.org/ip/inventory/weedlist.php>.

- I. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.
- J. Removal of vegetation must occur by hand, mechanically, or using United States Environmental Protection Agency approved herbicides deployed using applicable BMPs to prevent impacts to beneficial uses of waters of the United States and/or State. Use of aquatic pesticides must be done in accordance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, and any subsequent reissuance as applicable.
- K. All rough graded desilting basins must be designed, constructed and maintained, until all development on the project site is completed, according to the most recent California Stormwater Quality Association guidance for sediment basins.

IV. ADDITIONAL CONDITIONS: POST-CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. The Otay Business Park, LLC is prohibited from allowing post-construction discharges to cause onsite or offsite downstream erosion, damage to properties or damage to stream habitats in the unnamed tributary to the Tijuana River that will receive post-construction discharges from project site.
- B. All storm drain inlet structures within the project boundaries must be stamped and/or stenciled (or equivalent) with appropriate language prohibiting non-storm water discharges.
- C. All post-construction BMPs, including those described in the *Storm Water Management Plan for the Otay Business Park, TM 5505, September 8, 2008* prepared by Kimley-Horn and Associates, Inc. for Otay Business Park, LLC must be sized to comply with the following numeric sizing criteria and treat 100 percent of the impervious surfaces associated with the project:
 - 1. Volume
Volume-based BMPs must be designed to mitigate (infiltrate, filter, or treat) either:

- a. The volume of runoff produced from a 24-hour 85th percentile storm event, as determined from the local historical rainfall record (0.6 inch approximate average for the San Diego County area); or
- b. The volume of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile 24-hour runoff event; or

2. Flow

Flow-based BMPs must be designed to mitigate (infiltrate, filter, or treat) either:

- a. The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour; or
- b. The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity, as determined from the local historical rainfall record, multiplied by a factor of two; or
- c. The maximum flow rate of runoff, as determined from the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two.

D. All post-construction BMPs must minimally comply with the current (as of the issuance date of the this Certification) requirements in *California Regional Water Quality Control Board, San Diego Region Order No. R9-2007-0001, NPDES No. CAS0108758, Waste Discharge Requirements For Discharges Of Urban Runoff From The Municipal Separate Storm Sewer Systems (Ms4s) Draining The Watersheds Of The County Of San Diego, The Incorporated Cities Of San Diego County, The San Diego Unified Port District, And The San Diego County Regional Airport Authority.*

E. Post-construction BMPs must be installed and functional prior to occupancy and/or planned use of development areas.

F. All post-construction BMPs, including but not limited to two detention basins and catch basin inserts, as described in *Storm Water Management Plan for the Otay Business Park, TM 5505, September 8, 2008* prepared by Kimley-Horn and Associates, Inc. for Otay Business Park, LLC, and storm water discharge points must:

1. Be regularly inspected and maintained for the life of the project per manufactures' specifications and industry standards;
2. No less than one time per year assess the performance of the systems for the adequacy of receiving waters protection and identify any necessary corrective measures;
3. Have all preventive and corrective maintenance performed;

4. Be inspected no less than one time per year, immediately prior to the commencement of the rainy season (October 1) and after every storm event exceeding 0.5 inches of precipitation; and
 5. A log documenting all BMP inspections and maintenance activities shall be maintained.
- G. The detention basins must be designed and constructed in accordance with the most recent California Stormwater Quality Association guidance for detention basins. The basin outlets must be placed to maximize the flowpath through the facility. The ratio of flowpath length to width from the inlet to the outlet must be at least 1.5:1. The flowpath length is defined as the mean width of the basin.
- H. The Otay Business Park, LLC must maintain the detention basins in perpetuity according to the most recent California Stormwater Quality Association guidance for detention basins. Typical activities include, but are not limited to:
1. Semiannual inspection for the beginning and end of the wet season for standing water, slope stability, sediment accumulation, trash and debris, and presence of burrows;
 2. Removal of accumulated trash and debris in the basins as needed to ensure proper functioning of the basin; and
 3. Yearly inspection of accumulated sediment volume. Accumulated sediment should be removed and the basin re-graded when the accumulated sediment volume exceeds 10 percent of the basin volume.

V. ADDITIONAL CONDITIONS: COMPENSATORY MITIGATION

- A. The Otay Business Park, LLC must provide mitigation for permanent discharges to 0.2 acres (2,903 linear feet ranging in width from 1 to 6 feet) of ephemeral stream and 0.24 acres of vernal pools, which must include:
1. On-site stream establishment that will realign the channel resulting in 0.2 acres (3,055 linear feet) of ephemeral stream.
 2. Off-site preservation of 3 ephemeral streams totaling approximately 0.03 acres (950 linear feet ranging in width from 1 to 2 feet) at the Lonestar Ranch Property.
 3. Purchase of 0.4 acres of restoration credits for non-wetland waters at the Rancho Jamul Mitigation Bank

4. Off-site restoration of 0.48 acres of vernal pools, enhancement of 0.66 acres of vernal pools and restoration to 4.70 acres of surrounding vernal pool watersheds at the Lonestar Ranch Property.
-
- B. Mitigation for unavoidable impacts, monitoring and success criteria are described in the *Otay Business Park Revised Biological Technical Report* dated August 14, 2009, prepared by Helix Environmental Planning, Inc.; *Otay Business Park Vernal Pool Preserve Restoration Plan* dated October 17, 2011 prepared by Helix Environmental Planning, Inc. and in supplemental information provide to the San Diego Water Board. In addition to specific conditions within this Certification the Otay Business Park must implement and report to the San Diego Water Board following protocols in the above reference documents. All changes must receive San Diego Water Board approval prior to implementation.
 - C. The Otay Business Park, LLC must salvage soil collected from the impacted vernal pools to be used as inoculum at the restoration site.
 - D. The construction of proposed mitigation must be concurrent with project grading and completed no later than 9 months following the initial discharge of dredge or fill material into on-site waters. Delays in implementing mitigation must be compensated for by an increased mitigation implementation of 10 percent of the cumulative compensatory mitigation for each month of delay.
 - E. Permanent fill (rip-rap) void space must be backfilled with native soil and planted with native species.
 - F. The Otay Business Park, LLC must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the United States and/or State. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species. The Otay Business Park, LLC must implement all necessary BMPs to control erosion and runoff from areas associated with this project.
 - G. The Otay Business Park, LLC must salvage leaf litter, coarse woody debris, and upper soil horizons from impacted jurisdictional water sites that are relatively free of invasive exotic species for use in on-site mitigation areas.
 - H. The mitigation site must be designed, constructed, and maintained in perpetuity to meet the following conditions:
 1. The channel(s) through the mitigation site are characterized by equilibrium conditions, with no evidence of severe aggradation or degradation;
 2. As viewed along cross-sections, the channels and buffers have a variety of slopes, or elevations, that are characterized by different moisture gradients. Each sub-slope

contains physical patch types or features that contribute to irregularity in height, edges, or surface and to complex topography overall; and

3. The mitigation site has a well-developed plant community characterized by a high degree of horizontal and vertical interspersions among plant zones and layers.
 - I. Throughout the mitigation monitoring program, mitigation areas must be maintained free of perennial exotic plant species including, but not limited to, pampas grass, giant reed, tamarisk, sweet fennel, tree tobacco, castor bean, and pepper tree. Annual exotic plant species must not occupy more than 5 percent of the on-site or off-site mitigation areas.
 - J. Mitigation shall be considered acceptable once it has met the pre-determined success criteria for that site and demonstrated through required monitoring, and must be maintained, in perpetuity, in a manner that consistently meets the final success criteria identified.
 - K. The San Diego Water Board acceptance of the final mitigation plan applies only to the Project and must not be construed as approval of the mitigation site or plan for use by other current or future projects that are planning to use additional acreage at the site for mitigation.
 - L. Any maintenance activities that do not contribute to the success of the mitigation site and enhancement of beneficial uses and ecological functions and services are prohibited. Maintenance activities are limited to the removal of trash and debris, removal of exotic plant species, replacement of dead native plant species, and remedial measures deemed necessary for the success of the restoration program.
 - M. If at any time during the implementation and establishment of the mitigation area(s), and prior to verification of meeting success criteria, a catastrophic natural event (e.g., fire, flood) occurs and impacts the mitigation area, the Otay Business Park, LLC is responsible for repair, replanting and subsequent success of the damaged area(s).
 - N. For the purpose of determining mitigation credit for the removal of exotic/invasive plant species, only the actual area occupied by exotic/invasive plant species must be quantified to comply with mitigation requirements.
 - O. For purposes of this Certification, establishment is defined as the creation of vegetated or unvegetated waters of the United States and/or State where the resource has never previously existed (e.g. conversion of nonnative grassland to a freshwater marsh). Restoration is divided into two activities, re-establishment and rehabilitation. Re-establishment is defined as the return of natural/historic functions to a site where vegetated or unvegetated waters of the United States and/or State previously existed (e.g., removal of fill material to restore a drainage). Rehabilitation is defined as the improvement of the general suite of functions of degraded vegetated or unvegetated waters of the United States and/or State (e.g., removal of a heavy infestation or monoculture of exotic plant species from jurisdictional areas and replacing with native

species). Enhancement is defined as the improvement to one or two functions of existing vegetated or unvegetated waters of the United States and/or State (e.g., removal of small patches of exotic plant species from an area containing predominantly natural plant species). Preservation is defined as the acquisition and legal protection from future impacts in perpetuity of existing vegetated or unvegetated waters of the United States and/or State (e.g., conservation easement).

VI. MONITORING REQUIREMENTS

- A. Monitoring of the mitigation site must utilize the California Rapid Assessment Method (CRAM), a quantitative function-based assessment to establish baseline and reference conditions, set success criteria, and assess mitigation site progress. The results of the CRAM assessment must be submitted with the annual monitoring reports and the data must be uploaded into eCRAM (<http://www.cramwetlands.org>). CRAM monitoring may be done less frequently than annually, but CRAM assessments at the project and mitigation sites must include assessments prior to construction (baseline), immediately following project and mitigation construction (year 0) and at years 3 and 5 following completion of project and mitigation construction.
- B. CRAM assessments that are to be included as part of the vernal pool mitigation monitoring must be done within the rainy season when ponding is evident and most vernal pool species are visible. For vernal pool CRAM assessments years 3 and 5 should be adjusted to be conducted in wet years as defined below in condition VI.C.
- C. The Otay Business Park, LLC must provide annual mitigation monitoring for a minimum of 5 years. The monitoring period must include at least 3 winters producing average or above average rain totals for the year. Rain totals and averages for the year will be determined from the closest National Weather Service rain gauge. An on-site rain gage must be placed on the vernal pool mitigation site. A log of rain measurements from the site must be included in the monitoring report.
- D. The Otay Business Park, LLC must include in the annual monitoring report the depth, extent and duration of ponding in the mitigation and reference vernal pools, and identify if the conditions present are adequate to support San Diego fairy shrimp and vernal pool species populations. In years when conditions are adequate, include a comparison of population densities of San Diego fairy shrimp in the mitigation pools and reference pools.
- E. If populations of San Diego fairy shrimp or other vernal pool species decline, an evaluation should be done to identify all potential causes for the decline and propose recommendations for any necessary actions.
- F. The San Diego Water Board Executive Officer may make revisions to the monitoring program at any time during the five year monitoring term, and may include a reduction

or increase in the number of parameters to be monitored, locations monitored, the frequency of monitoring, the length of monitoring, or the number and size of samples collected.

- G. The Otay Business Park, LLC must develop and implement a five-year Receiving Waters Monitoring Plan in the Tijuana River Watershed to evaluate potential project impacts from pollutants/stressors to the unnamed tributary to the Tijuana River. The Receiving Waters Monitoring Plan must be developed and submitted to the San Diego Water Board for approval prior to construction commencement. The Receiving Waters Monitoring Plan must assess conditions before, during, and after impacts have occurred by measuring changes in the functional assessment of the health of wetland and riparian habitats in to unnamed tributary to the Tijuana River using CRAM at three assessment stations. The results of the CRAM assessment must be submitted each year with the Annual Progress Reports.
- H. Where procedures are not otherwise specified for the Receiving Water Quality Monitoring Plan, sampling, analysis, the quality assurance/quality control must be conducted in accordance with the Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Program Plan (QAPP)¹ for the State of California's Surface Water Ambient Monitoring Program, adopted by the State Water Resources Control Board.

VII. NOTIFICATION REQUIREMENTS

- A. The Otay Business Park, LLC must report to the San Diego Water Board any noncompliance which may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time the Otay Business Park, LLC becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Otay Business Park, LLC becomes aware of the circumstances. The written submission shall contain a written description of the incident and its cause, the period of the noncompliance including exact dates and times, and if the and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The San Diego Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours.
- B. This Certification is not transferable in its entirety or in part to any person except after notice to the San Diego Water Board in accordance with the following terms:

¹ The Quality Assurance Program Plan is available on the State Water Board's SWAMP website at http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/qapp/qaprp082209.pdf

1. **Transfer of Property Ownership:** the Otay Business Park, LLC must notify the San Diego Water Board of any change in ownership of the Project area. Notification of change in ownership must include, but not be limited to, a statement that the Otay Business Park, LLC has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the Executive Officer of the San Diego Water Board **within 10 days of the transfer of ownership.**
2. **Transfer of Mitigation Responsibility:** Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in Section V and VII.F of this Certification must include a signed statement from an authorized representative of the new party (transferee) demonstrating acceptance and understanding of the responsibility to comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under Water Code section 13385, subdivision (a). Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board **within 10 days of the transfer date.**
3. **Transfer of Post-Construction BMP Maintenance Responsibility:** The Otay Business Park, LLC assumes responsibility for the inspection and maintenance of all post-construction structural BMPs until such responsibility is legally transferred to another entity. At the time maintenance responsibility for post-construction BMPs is legally transferred, the Otay Business Park, LLC must submit to the San Diego Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer specifications.

Upon properly noticed transfers of responsibility, the transferee assumes responsibility for compliance with this Certification and references in this Certification to the Otay Business Park, LLC will be interpreted to refer to the transferee as appropriate. Transfer of responsibility does not necessarily relieve the Otay Business Park, LLC of this Certification in the event that a transferee fails to comply.

- C. The Otay Business Park, LLC must notify the San Diego Water Board in writing **at least 5 days prior to** the actual commencement of dredge, fill, and discharge activities.
- D. The Otay Business Park, LLC must notify the San Diego Water Board in writing **at least 5 days** prior to the actual commencement of mitigation installation, and completion of mitigation installation.
- E. Prior to start of construction, the Otay Business Park, LLC must provide the San Diego Water Board with verification that 0.4 acres of mitigation credit for restoration of non-

wetland waters of the United States and/or State in the Rancho Jamul Mitigation Bank have been purchased.

- F. Prior to the start of construction, the Otay Business Park, LLC must provide the San Diego Water Board a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all mitigation areas and their buffers in perpetuity. Within one year of the start of construction, the Otay Business Park, LLC must submit proof of a completed preservation mechanism that will protect all mitigation areas and their buffers in perpetuity. Construction of the site must not be initiated until a completed preservation mechanism is received. The conservation easement, deed restriction, or other legal limitation on the mitigation property must be adequate to demonstrate that the site will be maintained without future development or encroachment on the site which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the United States and/or State that it supports. The legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland and streambed functions and values of the site. The preservation mechanism must clearly prohibit activities that would result in soil disturbance or vegetation removal, other than the removal of non-native vegetation. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation.
- G. The Otay Business Park, LLC must acquire a performance bond to ensure implementation of structural Best Management Practices (BMPs) as proposed in *Storm Water Management Plan for the Otay Business Park, TM 5505, September 8, 2008* prepared by Kimley-Horn and Associates, Inc. for Otay Business Park, LLC. Evidence of the acquisition of a performance bond must be submitted to the San Diego Water Board before construction commences.
- H. Prior to project construction, the Otay Business Park, LLC must submit to the San Diego Water Board, a letter accepting full responsibility for the inspection and maintenance of all BMPs installed on all roads that are required to be improved as part of the project. Alternatively, the Otay Business Park, LLC may submit a letter documenting that the County of San Diego accepts full responsibility for the inspection and maintenance of all BMPs installed on all roads that are required to be improved as part of the project.
- I. The Otay Business Park, LLC must acquire a performance bond or demonstrate proof of endowment to ensure the implementation of compensatory mitigation, monitoring, and maintenance as described here and in the mitigation plans. Monitoring and maintenance must continue until success criteria are achieved and confirmed by the San Diego Water Board. Evidence of the acquisition of a performance bond or demonstrate proof of endowment by the Otay Business Park, LLC must be submitted to the San Diego Water Board before construction commences.

- J. To protect rare, threatened, or endangered species, the Otay Business Park, LLC must implement all conservation measures included in the U.S. Fish and Wildlife Service Section 7 Consultation. The Otay Business Park, LLC must provide a copy of the final Section 7 Consultation letter to the San Diego Water Board prior to initiation of construction activities.

VIII. REPORTING REQUIREMENTS:

- A. The Otay Business Park, LLC must submit annual progress reports describing status of compliance with all requirements of this Certification to the San Diego Water Board prior to **December 1** of each year **following the issuance of this Certification** until the project has reached completion. The Otay Business Park, LLC must submit a Final Project Annual Report to the San Diego Water Board **prior to December 1 following completion of the project**. The reports must include the following:
1. Date of construction initiation.
 2. Projected date of construction completion.
 3. Status of BMPs for the project.
 4. Final Project Report: As-built drawings no bigger than 11"X17."
- B. Prior to initiation of mitigation activities, the Otay Business Park, LLC must conduct a quantitative function-based assessment to evaluate the condition of the mitigation site. The results of the functional assessment must be submitted to the San Diego Water Board in a report no later than **30 days** after the initiation of mitigation activities.
- C. Mitigation monitoring reports must be submitted annually until mitigation has been deemed successful in accordance with the vernal pool mitigation monitoring plan and the receiving water monitoring plan. Annual monitoring reports must be submitted **prior to December 1 of each year**. Monitoring reports must include, but not be limited to, the following:
1. Names, qualifications, and affiliations of the persons contributing to the report;
 2. Date of initiation of mitigation installation and date mitigation installation was completed;
 3. Mitigation as-builts, including topography maps and planting locations;
 4. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
 5. Topographic complexity characteristics at each mitigation site;

6. Upstream and downstream habitat and hydrologic connectivity;
 7. Source of hydrology;
 8. Width of native vegetation buffer around the entire mitigation site;
 9. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
 10. Stream Photodocumentation, including all areas of permanent and temporary impact, prior to and after project construction, and mitigation areas, including all areas of permanent and temporary impact, prior to and after project construction. Photo documentation must be conducted in accordance with guidelines posted at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced and;
 11. A Survey report documenting boundaries of mitigation area, including Geographic Information System (GIS) shape files (polygons) of the impact and mitigation areas (Two GPS readings (points) must be taken on each line of the polygon and the polygon must have a minimum of 10 points). GIS metadata must also be submitted.
- D. In the event that the proposed mitigation does not obtain the 3rd, 4th or 5th year success criteria milestones for mitigation as the Otay Business Park, LLC must provide the San Diego Water Board with a technical report detailing the actions that will be taken to bring the mitigation up to the success criteria.
- E. The submittal of information under this Certification is required pursuant to California Water Code (CWC) sections 13267 and 13283. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit required information pursuant to CWC section 13268 or 13385.
- F. All reports and information submitted to the San Diego Water Board must be submitted in both hardcopy and electronic format. The preferred electronic format for each report submission is one file in PDF format that is also Optical Character Recognition (OCR) capable.
- G. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:
1. For a corporation, by a responsible corporate officer of at least the level of vice president.
 2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.

3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
 4. A duly authorized representative may sign applications, reports, or information if:
 - a. The authorization is made in writing by a person described above.
 - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 - c. The written authorization is submitted to the San Diego Water Board Executive Officer.
- H. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:
- "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
- I. The Otay Business Park, LLC must submit reports required under this Certification, or other information required by the San Diego Water Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; Project No. 08C-079
9174 Sky Park Court, Suite 100
San Diego, California 92123

VIII. CEQA FINDINGS

- A. The County of San Diego is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)), and filed a Notice of Determination on November 8, 2011, the Environmental Impact Report for the *Otay Business Park Tentative Map; 3100 5505; Log No. 93-19-006W*, Otay Business Park LLC, State Clearing House No. 2008061077.
- B. The San Diego Water Board has reviewed the lead agency's Environmental Impact Report and finds that the Project as proposed will not have a significant effect on the environment if compensatory mitigation is accomplished as described in the Environmental Impact Report and this Certification.

IX. PUBLIC NOTIFICATION OF PROJECT APPLICATION:

- A. On October 23, 2008, receipt of the project application was posted on the San Diego Water Board web site to serve as appropriate notification to the public. No public comments were received.


X. SAN DIEGO WATER BOARD CONTACT PERSON:

Jody Ebsen
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
858-636-3146
jebesen@waterboards.ca.gov

XI. WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Otay Business Park Project (Project No. 08C-079) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges That Have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Water Quality Control Plan for the San Diego Basin Region (9) (Basin Plan).



DAVID W. GIBSON
Executive Officer
Regional Water Quality Control Board

10-10-12
Date

- Attachments:
1. Project Information
 2. Distribution List
 3. Location Map
 4. Site Map
 5. Mitigation Map (on-site)
 6. Mitigation Map (off-site for vernal pools)
 7. Mitigation Map (off-site for ephemeral streams)

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant: Ricardo Jinich
Otay Business Park, LLC
4225 Executive Square, Suite 920
La Jolla, CA 92037
Telephone: 858-535-9000
Facsimile: 8585359100
Email: ricardo@paragoncompany.com

Applicant Representatives: Greg Mason
Alden Environmental, Inc.
3612 Felton Street
San Diego, CA 92104
Telephone: 888-6124703
Email: gmason@aldenenv.com

Project Name: Otay Business Park

Project Location: The proposed project is located 0.5 miles east of Enrico Fermi Drive in the Otay Mesa area of San Diego County near the international border. It is located approximately at latitude 32.554844 and longitude -116.911354.

Type of Project: Commercial/Industrial Complex.

Need for Project: To create a mixed use industrial area.

Project Description: The project is to build an industrial business park in East Otay Mesa on a 161 acre property adjacent to the United States/Mexico border approximately 0.5 miles east of Enrico Fermi Drive. The project will divide the site into 59 commercial/industrial lots; two detention basin lots, a 0.2 acre lot set aside for a sewer pump station, and open space to accommodate a realigned stream channel through the site. The project impacts to waters of the United States and/or State include 0.2 acres of ephemeral streams and 0.24 acres of vernal pools. Mitigation for these impacts will be done by on-site ephemeral stream establishment, off-site ephemeral stream preservation; off-site vernal pool restoration and preservation; and restoration of non-wetland waters of the United States and/or State through purchase of mitigation credits at Rancho Jamul Mitigation Bank.

Federal Agency/Permit: U.S. Army Corps of Engineers §404, Shanti Santulli.

Other Required Regulatory Approvals: California Department of Fish and Game Streambed Alteration Agreement, Kelly Fisher.

California Environmental Quality Act (CEQA) Compliance: Environmental Impact Report for the *Otay Business Park Tentative Map; 3100 5505; Log No. 93-19-006W*, Otay Business Park LLC, State Clearing House No. 2008061077.

Receiving Water: Unnamed tributary to the Tijuana River in the Tijuana River Watershed (911.12).

Affected Waters of the United States: Permanent: 0.2 acres (2,903 linear feet) of ephemeral stream and 0.24 acres of vernal pools.

Related Projects Implemented/to be Implemented by the Applicant(s): N/A

Compensatory Mitigation: The Otay Business Park, LLC must provide mitigation for permanent discharges to 0.2 acres (2,903 linear feet ranging in width from 1 to 6 feet) of ephemeral stream and 0.24 acres of vernal pools, which must include:

1. On-site stream establishment that will realign the channel resulting in 0.2 acres (3,055 linear feet) of ephemeral stream.
2. Off-site preservation of 3 ephemeral streams totaling approximately 0.03 acres (950 linear feet ranging in width from 1 to 2 feet) at the Lonestar Ranch Property.
3. Purchase of 0.4 acres of restoration credits for non-wetland waters at the Rancho Jamul Mitigation Bank
4. Off-site restoration of 0.48 acres of vernal pools, enhancement of 0.66 acres of vernal pools and restoration to 4.70 acres of surrounding vernal pool watersheds at the Lonestar Ranch Property.

Mitigation for unavoidable impacts are described in the *Otay Business Park Revised Biological Technical Report* dated August 14, 2009, prepared by Helix Environmental Planning, Inc.; *Otay Business Park Vernal Pool Preserve Restoration Plan* dated October 17, 2011 prepared by Helix Environmental Planning, Inc. and in supplemental information provide to the San Diego Water Board.

Mitigation Location: On-site: Latitude: 32.554844 Longitude: -116.911354
Off-site: Latitude: 32.582837 Longitude: -116.959076

Best Management
Practices (BMPs):

All post-construction BMPs, including two detention basins and catch basin inserts in the improved roads, as described in the *Storm Water Management Plan for the Otay Business Park, TM 5505, September 8, 2008* prepared by Kimley-Horn and Associates, Inc. for Otay Business Park, LLC.

Public Notice: On October 23, 2008, receipt of the project application was posted on the San Diego Water Board web site to serve as appropriate notification to the public. No public comments were received.

Fees: Total Project Fee: \$18,515.00
Total Paid: \$ 4,000.00 (check No.1244)
\$14,515.00 (check No.1532)

CIWQS: Regulatory Measure ID: 354166
Place ID: 728237
Party ID: 33218

**ATTACHMENT 2
DISTRIBUTION LIST**

Cc via email:

Shanti Santulli
U.S. Army Corps of Engineers, Regulatory Branch
Shanti.A.Santulli@usace.army.mil

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

U.S. Environmental Protection Agency, Region 9
Wetlands Regulatory Office
R9-WTR8-Mailbox@epa.gov

David Zoutendyk
U.S. Department of the Interior
Fish and Wildlife Service
david_zoutendyk@fws.gov

Greg Mason
Alden Environmental Inc.
gmason@aldenenv.com



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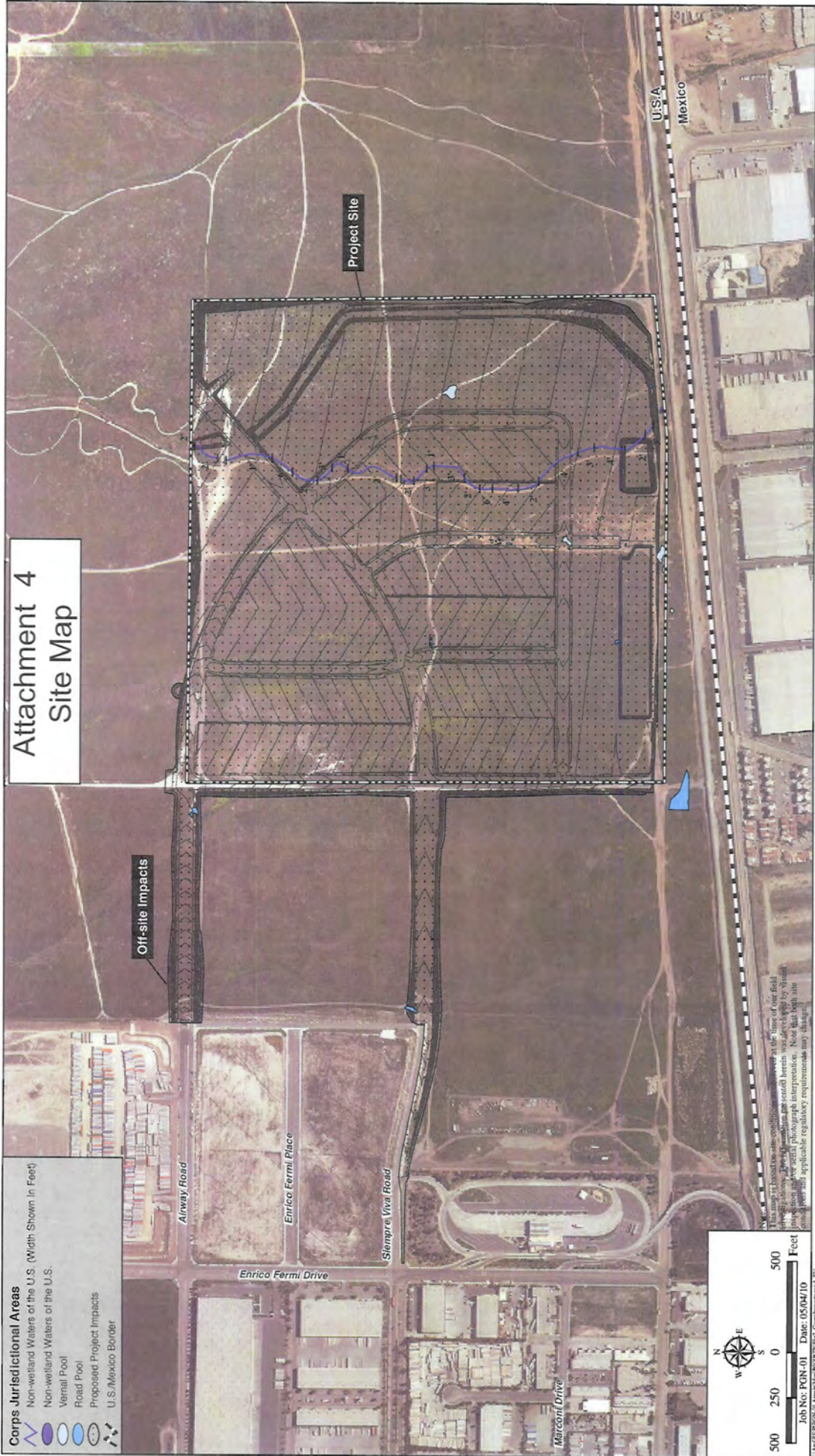
Regional Location Map

OTAY BUSINESS PARK

Figure 1

Attachment 4 Site Map

- Corps Jurisdictional Areas**
- Non-wetland Waters of the U.S. (Width Shown in Feet)
 - Non-wetland Waters of the U.S.
 - Vernal Pool
 - Road Pool
 - Proposed Project Impacts
 - U.S./Mexico Border



500 250 0 500 Feet

Job No: PGN-01 Date: 05/04/10

SCALE: 1" = 500' (Horizontal) 1" = 100' (Vertical)

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Corps Jurisdictional Delineation/Impacts
OTAY BUSINESS PARK
Figure 7



Attachment 5 Mitigation Site Map (on-site)

LEGEND

Vegetation Communities

- Vernal Pool (44200)
- Saltgrass Grassland (42130)
- Non-native Grassland (42200)
- Disturbed Habitat (11300)
- Developed (12000)
- Freshwater Marsh - Disturbed (32400)
- Mule Fat Scrub - Disturbed (63310)
- Road Pool*

Sensitive Plants

- Cs Small-flowered Morning Glory (*Cerotholus stimulans*)
- Ds Variegated Dudleya (*Dudleya variegata*)
- Fs San Diego Button Calf Lily (*Erythronium albidum* var. *pedunculatum*)
- Pv San Diego Barrel Cactus (*Ferocactus wislizeni*)
- Ps Chocolate Lily (*Hedysarum hibernicum*)
- Ib San Diego Marsh Elder (for restoration)

Sensitive Animals

- BLOW Burrowing Owl (*Aekewo californicus*)
- BLOW-B Burrowing Owl Burrow
- GRSP Grasshopper Sparrow (*Ammodramus leucurus*)
- HOLA California Horned Lark (*Thryothorus albicans aridus*)
- LOSH Loggerhead Shrike (*Lanius ludovicianus excubitorides*)
- NOHA Northern Harrier (*Circus cyaneus*)
- QCRU Quino Checkerspot Butterfly (*Euphydryas editha quino*)
- RFS Riverside Fairy Shrimp (*Streptocephalus occidentalis*)
- SDS San Diego Fairy Shrimp (*Streptocephalus occidentalis*)
- TSGS Two-striped Garter Snake (*Thamnophis elegans elegans*)
- WESP Western Spadefoot Toad (*Scaphiopus macrotis*)
- WTKI White-tailed Kite (*Elaenia leucurus*)

Other

- Watershed
- Extent of Sensitive Resources
- Streambed/WUS Mitigation
- Grassland and Burrowing Owl Mitigation
- U.S./Mexico Border

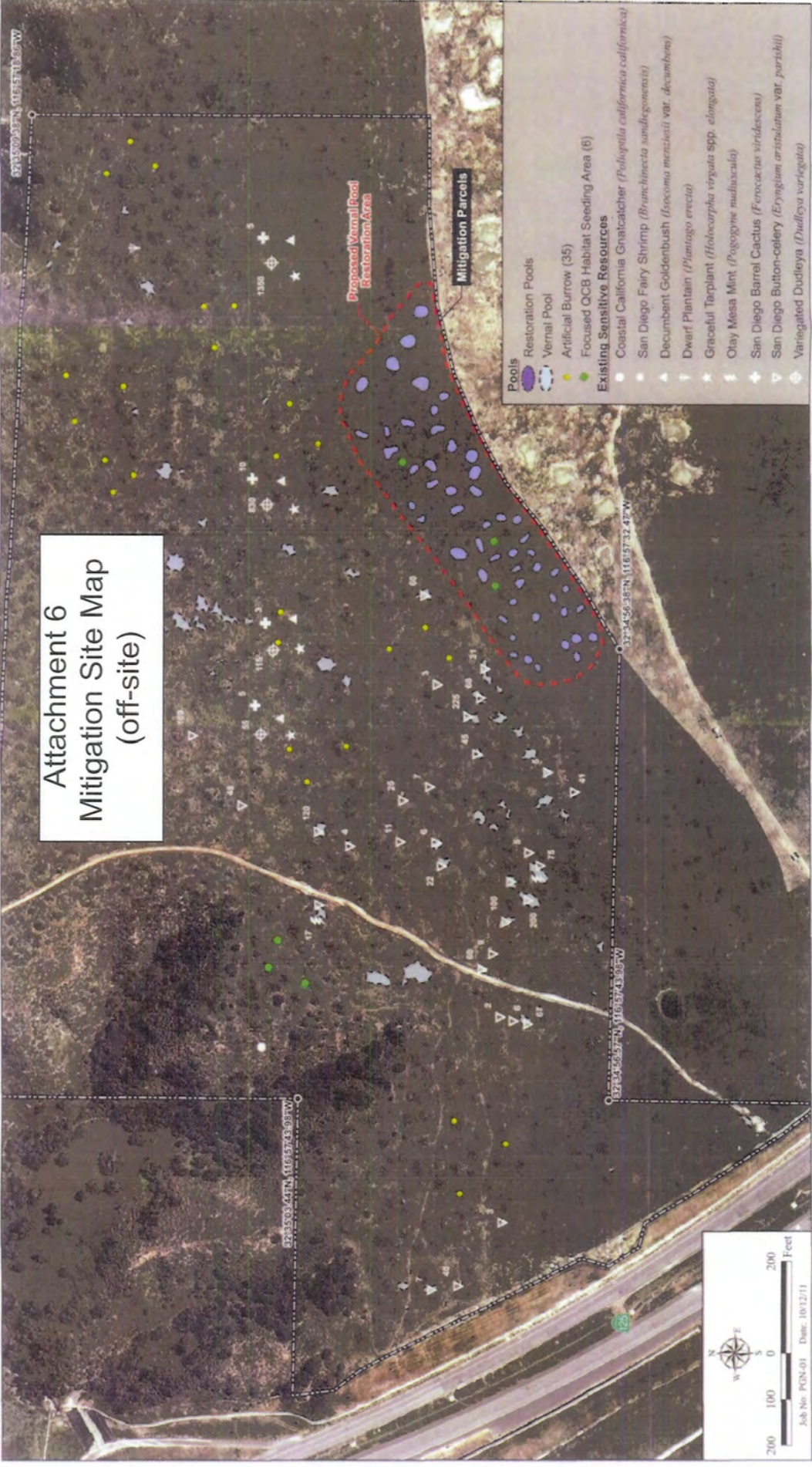
* Road Pool does not have a Holland code.



On-site Mitigation
OTAY BUSINESS PARK
Figure 11



Attachment 6
Mitigation Site Map
(off-site)

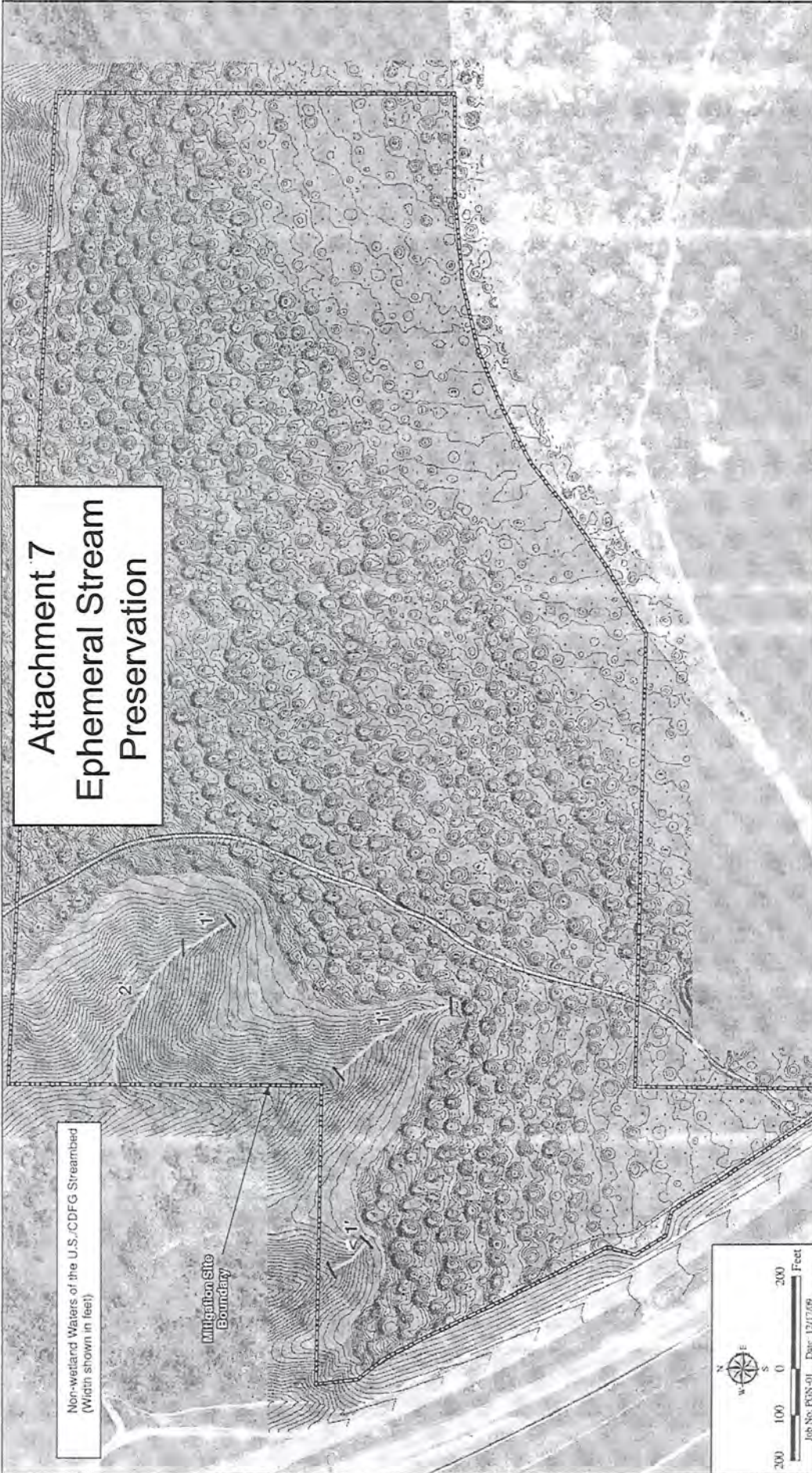


- Pools**
- Restoration Pools
 - Vernal Pool
 - Artificial Burrow (35)
 - Focused OCB Habitat Seeding Area (6)
- Existing Sensitive Resources**
- Coastal California Onatcaicher (*Polygonella californica californica*)
 - San Diego Fairy Shrimp (*Branchinecta sandiegensis*)
 - Decumbent Goldenbush (*Isocoma menziesii* var. *decumbens*)
 - Dwarf Plantain (*Plantago erecta*)
 - Gracelul Tarplant (*Holocarpha virgata* spp. *elongata*)
 - Olay Mesa Mint (*Pogogyne nudicaulis*)
 - San Diego Barrel Cactus (*Ferocactus viridescens*)
 - San Diego Button-celery (*Eryngium aristolatum* var. *parrishii*)
 - Variiegated Dudleya (*Dudleya variegata*)

Existing Conditions and Planned Restoration at Lonestar Mitigation Parcels

VERNAL POOL PRESERVE RESTORATION PLAN FOR OTAY BUSINESS PARK

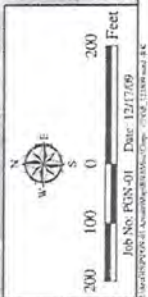
Figure 3



**Attachment 7
Ephemeral Stream
Preservation**

Non-wetland Waters of the U.S. CDFG Streambed
(Width shown in feet)

Mitigation Site
Boundary



Corps/CDFG Drainages
Lonestar Off-site Mitigation Area
OTAY BUSINESS PARK

HELIX