

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

2375 Northside Drive, Suite.100, San Diego, CA 92108  
Phone (619) 516-1990 • Fax (619) 516-1994  
<http://www.waterboards.ca.gov/sandiego/>

**Amendment No. 1 to Clean Water Act Section 401  
Water Quality Certification No. 08C-079**

**PROJECT: Otay Business Park Project  
Certification Number 08C-079**

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

Reg. Meas. ID: 354166 Place ID: 728237 Party ID: 33218 Person ID: 489361 WDID: 9000001852
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On October 10, 2012, Clean Water Act Section 401 Water Quality Certification No. 08C-079 (Certification) was issued to Otay Business Park (Applicant) for the Otay Business Park Project (Project).

By letter dated May 23, 2014, Greg Mason, on behalf of the Applicant, requested the Certification be amended to allow for the off-site re-establishment of vernal pools in lieu of on-site establishment of an ephemeral stream. On-site establishment of the ephemeral stream is no longer feasible as the location of the proposed channel is within the limits of the upcoming CalTrans State Route 11 and East Otay Mesa Port of Entry projects.

Based on the Applicant's request, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) is amending the Certification to allow for the re-establishment of 0.2 acres of vernal pools in lieu of 0.2 acres of on-site ephemeral stream establishment. Except as modified or superseded by the Certification modifications set forth below, all of the findings, provisions and other requirements of Certification No. 08C-079 remain in full force and effect. The following changes are made to Certification No. 08C-079 and are shown in underline/strikeout format to indicate added and removed language:

**1. Page 1, PROJECT DESCRIPTION is modified as follows:**

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 miles east on Enrico Fermi Drive. The Project will divide the site into 59 commercial/industrial lots; two detention basin lots; and 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 water 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)1) off-site ephemeral stream preservation; ~~3)2) off-site vernal pool restoration and preservation;~~ and 4)3) restoration of non-wetland

waters of the United States and/or State through purchase of mitigation credits at Rancho Jamul Mitigation Bank.

**2. Page 3, Section I. STANDARD CONDITIONS is replaced with the following:**

Pursuant to section 3860 of title 23 of the California Code of Regulations, the following three standard conditions apply to all water quality certification actions:

- 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 Water Code and chapter 28, article 6 (commencing with title 23, section 3867), of the California Code of Regulations.
- B. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to California Code of Regulations title 23, section 3855 subdivision (b), and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- C. This Certification action is conditioned upon total payment of any fee required under title 23, chapter 28 (commencing with section 3830) of California Code of Regulations and owed by the applicant.

**3. Page 3, Section II. ADDITIONAL CONDITIONS: GENERAL A. is modified as follows:**

- 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 by October 12, 2017. If the Project has not begun by within 5 years from the date of issuance by October 12, 2017, then this Certification shall expire on 5 years from the date of issuance on October 12, 2017. In addition, this Certification shall expire upon the expiration or retraction of the Clean Water Act section 404 (33 U.S.C. §1344) permit issued by the U.S. Army Corps of Engineers for this Project.

**4. Page 5, Section III. ADDITIONAL CONDITIONS: CONSTRUCTION BEST MANAGEMENT PRACTICES H. is modified as follows:**

- 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-icp.org/ip/inventory/weedlist.php>~~http://www.cal-icp.org/ip/inventory/~~.

**5. Page 8, Section V. ADDITIONAL CONDITIONS: COMPENSATORY MITIGATION A. is modified as follows:**

- 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. 1. Off-site preservation of 3 ephemeral streams totaling approximately 0.03 acres (950 linear feet in width from 1 to 2 feet) at the Lonestar Ranch Property.
  3. 2. Purchase of 0.4 acres of restoration credits for non-wetland waters at Rancho Jamul Mitigation Bank.
  4. 3. Off-site restoration of ~~0.48~~0.68 acres of vernal pools, enhancement of 0.66 acres of vernal pools and restoration to 4.70 acres of surrounding vernal pool watershed 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, 2014* August 20, 2015 prepared by ~~Helix Environmental Planning, Inc.~~ Alden Environmental, Inc. and in supplemental information provided 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.

**6. Page 16, Section VII. Reporting Requirements C.10 is modified as follows:**

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. Photodocumentation must be conducted in accordance with guidelines posted at [http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/401\\_certificatio](http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certificatio)

[n/docs/StreamPhotoDocSOP.pdf](#)

[http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/401\\_certification/docs/401c/401PhotoDocRB9V713.pdf](http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/401c/401PhotoDocRB9V713.pdf). In addition, photodocumentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced and;

**7. Page 17, Section VIII. REPORTING REQUIREMENTS, I. is modified as follows:**

- I. The Otay Business Park, LLC must submit reports required under this Certification, or other information required by the San Diego Water Board, in electronic format via e-mail to [SanDiego@waterboards.gov](mailto:SanDiego@waterboards.gov). Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to:

~~Executive Officer  
California Regional Water Quality Control Board  
San Diego Region  
Attn: 401 Certification; Project No. 08C-079  
9147 Sky Park Court, Suite 100  
San Diego, CA 92123~~  
California Regional Water Quality Control Board  
San Diego Region  
Attn: 401 Certification No. 08C-079:PIN 728237  
2376 Northside Drive, Suite 100  
San Diego, CA, 92108

Each electronic document must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Certification No. 08C-079:PIN 728237.

**8. Page 19, Attachments are modified as follows**

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)~~
6. Mitigation Map for off-site vernal pools re-establishment
7. Mitigation Map (off-site for ephemeral streams preservation)

**9. Page 20, Attachment 1 PROJECT INFORMATION, Project Description is modified as follows:**

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 miles east on Enrico Fermi Drive. The Project will divide the site into 59 commercial/industrial lots; two detention basin lots; and 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 water 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)1) off-site ephemeral stream preservation; ~~3)2) off-site vernal pool restoration and preservation;~~ and 4)3) restoration of non-wetland waters of the United States and/or State through purchase of mitigation credits at Rancho Jamul Mitigation Bank.

**10. Page 21, Attachment 1 PROJECT INFORMATION, Compensatory Mitigation is modified as follows:**

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. 1. Off-site preservation of 3 ephemeral streams totaling approximately 0.03 acres (950 linear feet in width from 1 to 2 feet) at the Lonestar Ranch Property.
3. 2. Purchase of 0.4 acres of restoration credits for non-wetland waters at Rancho Jamul Mitigation Bank.
4. 3. Off-site restoration of ~~0.48~~0.68 acres of vernal pools, enhancement of 0.66 acres of vernal pools and restoration to 4.70 acres of surrounding vernal pool watershed 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 provided to the San Diego Water Board.

**11. Page 21, Attachment 1 PROJECT INFORMATION, Mitigation Location is modified as follows:**

~~On-site: Latitude: 32.554844 Longitude: -116.911354~~  
~~Off-site: Latitude: 32.582837 Longitude: -116.959076~~

**Notification:** Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with the California Code of Regulations, title 23, sections 3867 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Certification Amendment. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Amendment No. 1 to Certification No. 08C-079 issued on May xx, 2015.

  
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DAVID W. GIBSON  
Executive Officer  
San Diego Water Board

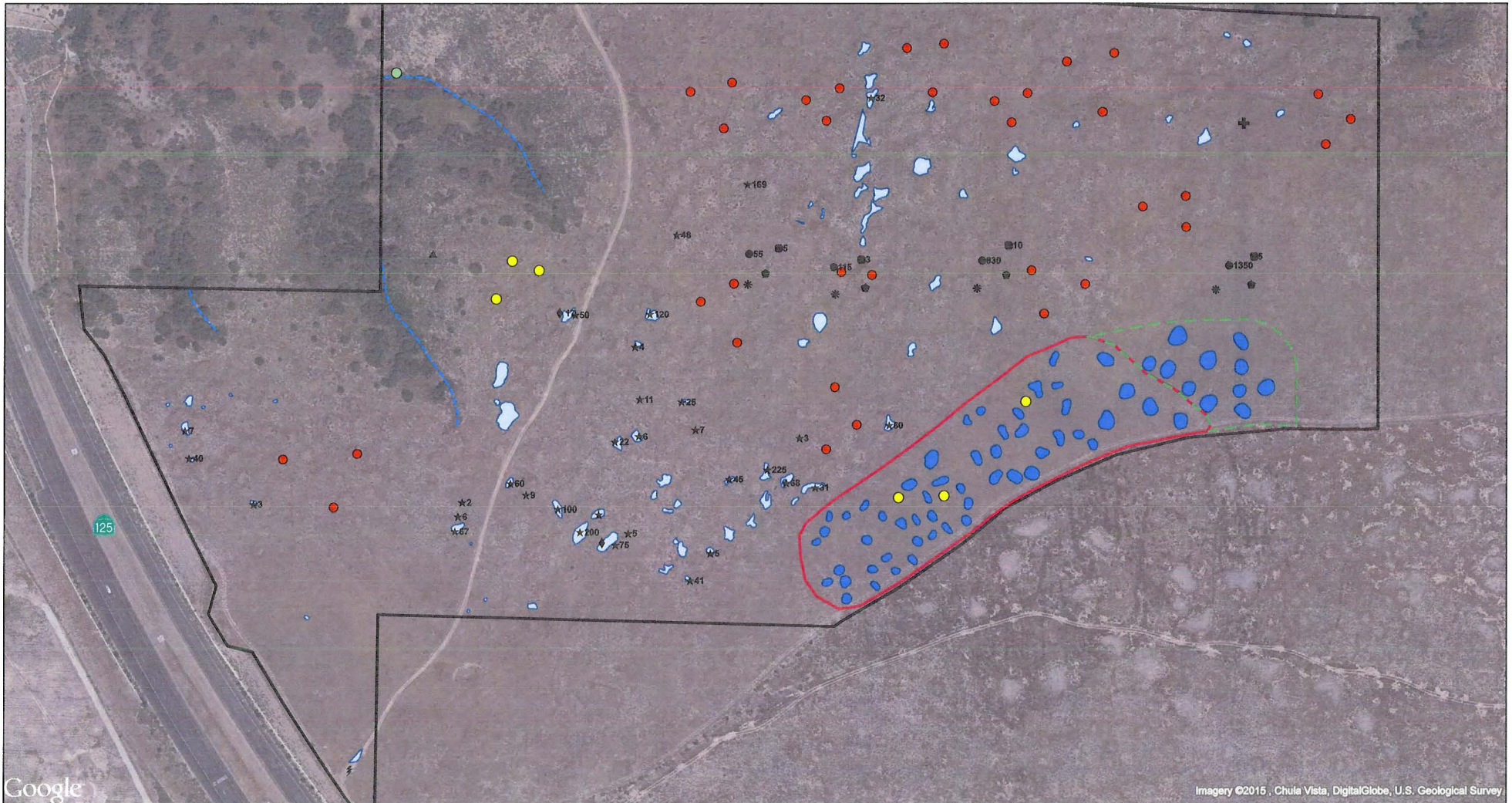
16 Dec. 2015  
Date

Otay Business Park, LLC  
Otay Business Park Project  
Certification No. 08C-079  
Amendment 1

## **ATTACHMENT 6**

### **Mitigation Map for off-site vernal pools re-establishment**

1. Figure 3. Existing Conditions and Planned Restoration at Lonestar Mitigation Parcels



Google

Imagery ©2015, Chula Vista, DigitalGlobe, U.S. Geological Survey

<ul style="list-style-type: none"> <li> Lonestar Mitigation Parcels</li> <li> Streambed/Waters of the U.S.</li> <li> Vernal Pool Mitigation Area (0.48 acre of pool area)</li> <li> Ephemeral Streambed Mitigation Area (0.20 acre of pool area)</li> <li> Existing Vernal Pool</li> <li> Restoration Pools</li> </ul>	<p><b>Existing Sensitive Resources</b></p> <ul style="list-style-type: none"> <li> Coastal California Gnatcatcher (<i>Poliopitila californica californica</i>)</li> <li> San Diego Fairy Shrimp (<i>Branchinecta sandiegonensis</i>)</li> <li> Decumbent Goldenbush (<i>Isocoma menziesii</i> var. <i>decumbens</i>)</li> <li> Dwarf Plantain (<i>Plantago erecta</i>)</li> <li> Graceful Tarplant (<i>Holocarpha virgata</i> spp. <i>elongata</i>)</li> <li> Otay Mesa Mint (<i>Pogogyne nudiuscula</i>)</li> <li> San Diego Barrel Cactus (<i>Ferocactus viridescens</i>)</li> <li> San Diego Button-celery (<i>Eryngium aristulatum</i> var. <i>parishii</i>)</li> <li> Variegated Dudleya (<i>Dudleya variegata</i>)</li> <li> Iva Translocation Site</li> <li> Artificial Burrow (35)</li> <li> Focused QCB Habitat Seeding Area (6)</li> </ul>
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0 100 200 Feet

**Figure 3**  
**Existing Conditions and Planned Restoration at Lonestar Mitigation Parcels**  
 VERNAL POOL PRESERVE RESTORATION PLAN FOR OTAY BUSINESS PARK