

**CITY OF SAN DIEGO**  
**RIGHT OF ENTRY PERMIT**

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and THE CITY OF CHULA VISTA and COUNTY OF SAN DIEGO ("PERMITTEES"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

**RECITALS**

- A. CITY is the owner of certain real property (the "City Property," as more particularly described in **Exhibit A: City Property**, attached hereto) identified as Assessor Parcel Numbers 647-020-11 & 647-030-02 located south of and adjacent to the Lower Otay Reservoir and Assessor Parcel Numbers 595-050-12 & 13 located north of the Upper Otay Reservoir in the County of San Diego, California,
- B. PERMITTEES shall have non-exclusive use of the "Permit Area," as shown in **Exhibit B & C: Permit Area**, attached hereto) to use existing roadways across City property for access to Otay Ranch Preserve properties to the south.
- C. Under the terms and conditions of this Permit, CITY will allow PERMITTEES to use the Permit Area to access the Otay Ranch Preserve property.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Right to Enter.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEES, its employees, agents, contractors, and invitees to enter upon the City Property solely for the purpose of accessing Otay Ranch Preserve properties to the south and east as shown in **Exhibit B & C: Permit Area**, attached hereto).
- 2. **Use of Permit Area.** PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules and regulations related to the Permit Use.
  - 2.1 **Cal/OSHA.** PERMITTEE and its employees, agents, contractors, and invitees shall comply at all times with the health and safety requirements Title 8 of the California Code of Regulations, as such regulations are enforced by the State of California Division of Occupational Safety and Health (also known as "Cal/OSHA").
  - 2.2 **Vehicles.** All vehicles used in relation to the Permit Use shall remain on existing roadways or designated access routes at all times while conducting the Permit use.

3. Term. The term of this Permit ("Term") shall be three years, commencing on the Effective Date. This Permit may be terminated by either party for any reason upon thirty (30) days prior written notice.
4. Revocable License. This Permit is not a lease. It is a non-exclusive license to use the Permit Area, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
5. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his/her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
6. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for PERMITTEE'S use of the Permit Area.
7. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights of way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
  - 7.1 Access and Security. PERMITTEES shall comply with all access rules and procedures for the City Property as CITY may require from time to time in CITY'S sole discretion.
8. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area or the City Property. PERMITTEES and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area or the City Property without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of

hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Lease.

- 8.1 Remediation. If PERMITTEE'S occupancy, use, development, or maintenance of the Permit Area or the City Property results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.
- 8.2 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, or maintenance of the Permit Area or the City Property, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 8.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on, under, or from the Permit Area or the City Property, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area or the City Property.
- 8.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, or maintenance of the Permit Area or the City Property ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area or the City Property, CITY may cause an environmental assessment of the Permit Area and/or the City Property to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, or under the Permit Area or the City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with

environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.

9. Noninterference. PERMITTEES shall not interfere with CITY'S use, operations, and activities on the City Property, and PERMITTEES shall use such routes and follow such procedures on the City Property as shall result in the least damage and inconvenience to CITY and other users of the City Property.
10. Property Damage. PERMITTEES shall pay for all damage to the City Property and CITY'S personal property on the City Property, and the personal property of third parties on the City Property resulting from PERMITTEE'S exercise of the rights granted by this Permit. PERMITTEES shall promptly repair and restore to its original condition all such property.
11. Signs. No signs may be displayed on the Permit Area without CITY'S prior written consent.
12. Maintenance of the Permit Area. PERMITTEES shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition.
13. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
14. Restoration. Immediately upon the expiration or earlier termination of this Permit, PERMITTEES shall promptly remove any and all improvements it installed in, on, under, or above the Permit Area and restore the Permit Area to its original condition, all at PERMITTEE'S sole cost and expense.
15. Indemnification. PERMITTEES shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, agents, contractor's, and invitees, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 15.1 Waiver of Claims. PERMITTEE waives any and all claims, demands, causes of action, and rights it may assert against CITY on account of any loss, damage, or injury to the Facility or any loss or degradation of the Facility's operations as a result of any event or

occurrence which is beyond the reasonable control of CITY.

- 15.2 Limitation of CITY'S Liability. CITY shall be liable only for the cost of repair or replacement of damaged equipment arising from the active negligence or willful misconduct of CITY, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. CITY'S total liability under this Permit shall be limited to the fair market value of the equipment in its condition at the time of damage.
16. Taxes. PERMITTEES, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the City Property as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
17. Encumbrances. PERMITTEES shall keep the City Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEES shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the City Property, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEES to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
18. PERMITTEE'S Risk. PERMITTEES shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the City Property resulting directly or indirectly thereby.
19. Insurance. Upon execution and delivery of this Permit, PERMITTEE shall deliver to CITY a current certificate of insurance for:
- a) **Commercial General Liability Insurance**, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000); and
  - b) **Workers' Compensation Insurance**, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with limits of at least One Million Dollars (\$1,000,000).
- 19.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

- 19.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.
- 19.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 19.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 19.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 19.6 Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area or the City Property, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to PERMITTEE'S use of the Permit Area or the City Property.
- 19.7 Accident Reports. PERMITTEE shall report to CITY any accident causing property damage or injury to persons on the Permit Area or the City Property and related to PERMITTEE'S use of the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 19.8 Failure to Comply. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach.
- 19.9 All-Risk Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Permit Area in an amount

to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.

- 19.10 Self Insurance. THE COUNTY OF SAN DEIGO is self insured and fulfills the insurance provisions as set for above.  
THE CITY OF CHULA VISTA IS SELF INSURED and carries a \$500,000 Self Insured retention over which a pooled layer of coverage and several commercial excess layers of liability coverage exists and fulfills the provision as set forth above.
20. Compliance with Law. PERMITTEES shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the City Property and PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property.
21. No Discrimination. PERMITTEES shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
22. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
23. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
24. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.
25. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
26. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight courier service with receipt signature required, or delivery by United States mail, return receipt requested, postage prepaid, and

addressed to the parties as follows:

CITY: THE CITY OF SAN DIEGO  
Real Estate Assets Department  
Attention: James F. Barwick, Director  
1200 Third Avenue, Suite 1700 (MS 51A)  
San Diego, California 92101

PERMITTEE: COUNTY OF SAN DIEGO  
Department of Parks and Recreation  
Attention: Megan Hamilton, Group Programs Manager  
9150 Chesapeake Drive, Suite 200  
San Diego, CA 92123

THE CITY OF CHULA VISTA  
Planning and Building Department  
Attention: Marisa Lundstedt, Principal Planner  
276 Fourth Avenue  
Chula Vista, CA 91911

27. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 12/7/09

THE COUNTY OF SAN DIEGO  
Department of Parks and Recreation

BY: Megan Hamilton  
Megan Hamilton, Group Program Manager, Resource  
Management Division

Date: \_\_\_\_\_

THE CITY OF CHULA VISTA

BY: \_\_\_\_\_  
Gary Halbert, Deputy City Manager/Development  
Services Director

Date: \_\_\_\_\_

THE CITY OF SAN DIEGO, a California municipal  
corporation

BY: \_\_\_\_\_  
James Barwick, Director Real Estate Assets

*ENVIRONMENTAL CLEARANCE:*

\_\_\_\_\_  
\_\_\_\_\_

City of San Diego Development Services Department,  
Environmental Analysis Section

BY: \_\_\_\_\_  
Name & Title: \_\_\_\_\_

*APPROVED AS TO FORM AND LEGALITY:*

Date: \_\_\_\_\_

JAN GOLDSMITH, City Attorney

BY: \_\_\_\_\_  
Name & Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: \_\_\_\_\_

THE COUNTY OF SAN DIEGO  
Department of Parks and Recreation

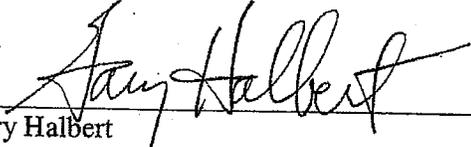
BY: \_\_\_\_\_

Megan Hamilton - Group Program Manager  
Resource Management Division

Date: \_\_\_\_\_

THE CITY OF CHULA VISTA

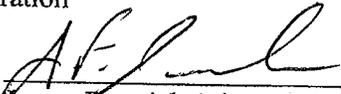
BY: \_\_\_\_\_

  
Gary Halbert  
Deputy City Manager/Development Services Director

Date: 12/13/09

THE CITY OF SAN DIEGO, a California municipal corporation

BY: \_\_\_\_\_

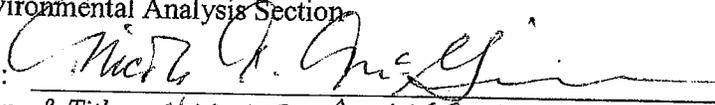
  
James Barwick, Director Real Estate Assets

**ENVIRONMENTAL CLEARANCE:**

This activity is categorically exempt from CEQA pursuant to State  
CEQA Guidelines, Section 15301.

City of San Diego Development Services Department,  
Environmental Analysis Section

BY: \_\_\_\_\_

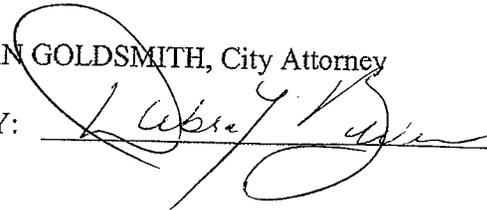
  
Name & Title: NICOLE A. MCGINNIS, SENIOR PLANNER

**APPROVED AS TO FORM AND LEGALITY:**

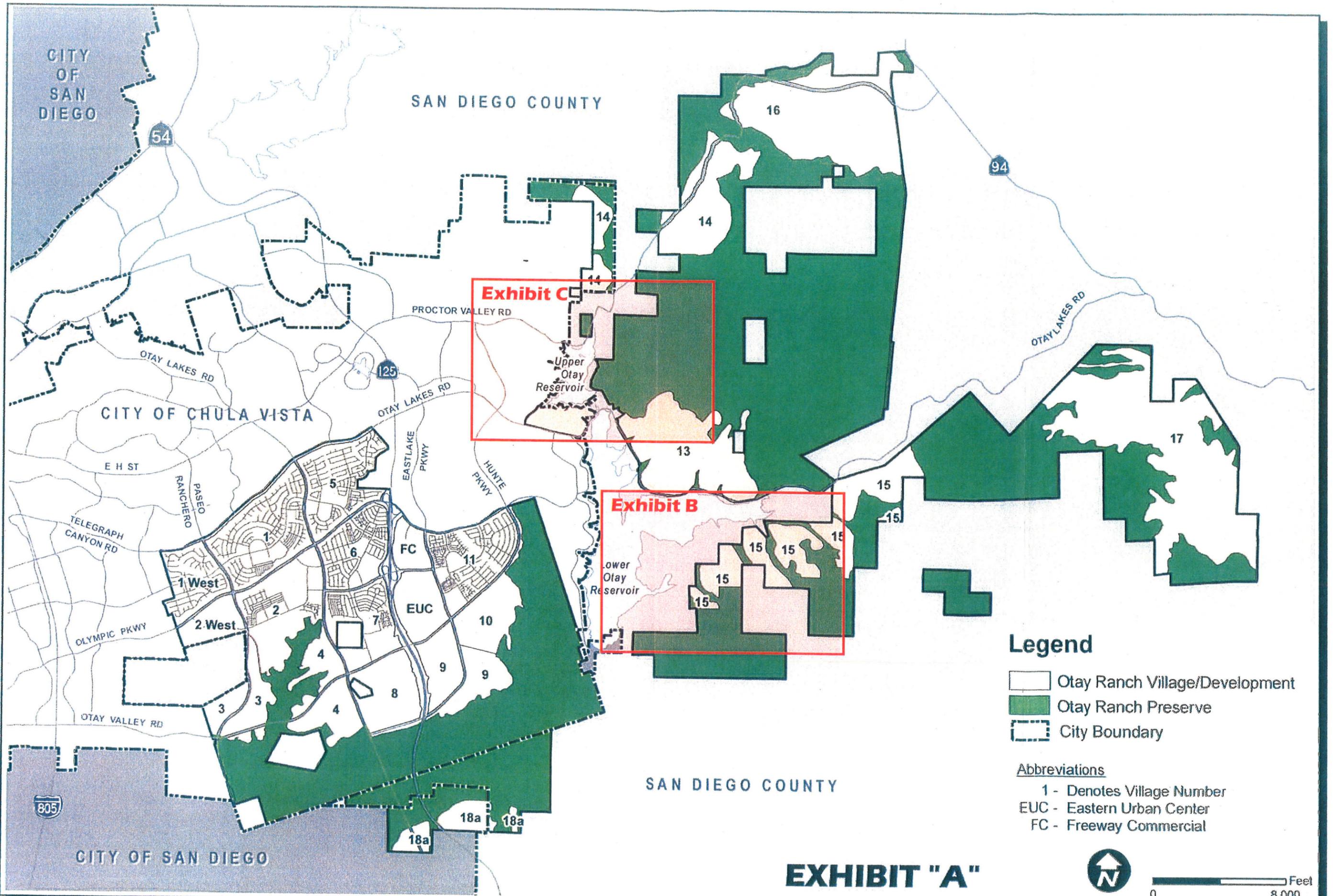
Date: 12/18/09

JAN GOLDSMITH, City Attorney

BY: \_\_\_\_\_



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### Legend

- Otay Ranch Village/Development
- Otay Ranch Preserve
- City Boundary

### Abbreviations

- 1 - Denotes Village Number
- EUC - Eastern Urban Center
- FC - Freeway Commercial

# EXHIBIT "A"



# Lower Otay Reservoir

City of San Diego  
APN  
6470201100

City of San Diego  
APN  
6470300200

State of California

State of California

State of California

State of California

County of  
San Diego

Otay Ranch Company

State of California

State of California

McMillin  
Otay Ranch  
LLC

McMillin  
Otay Ranch  
LLC

United States  
of  
America  
Public Domain

City of Chula Vista

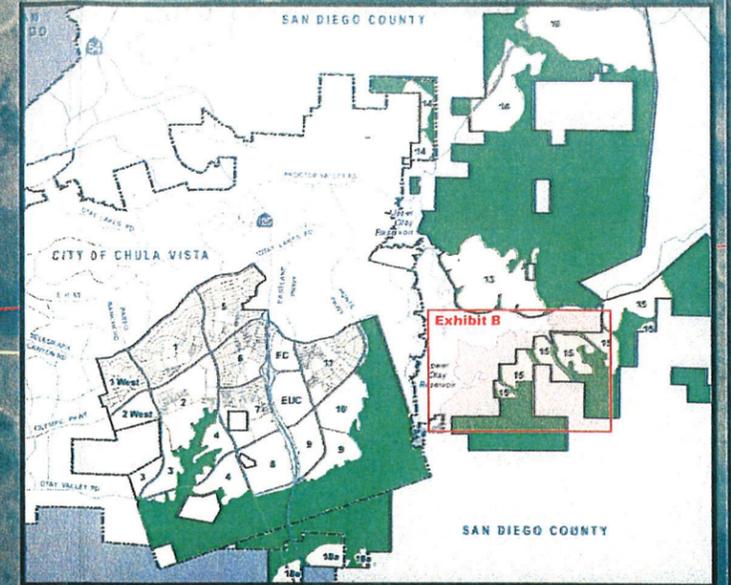
City of Chula Vista

State of California

United States of America

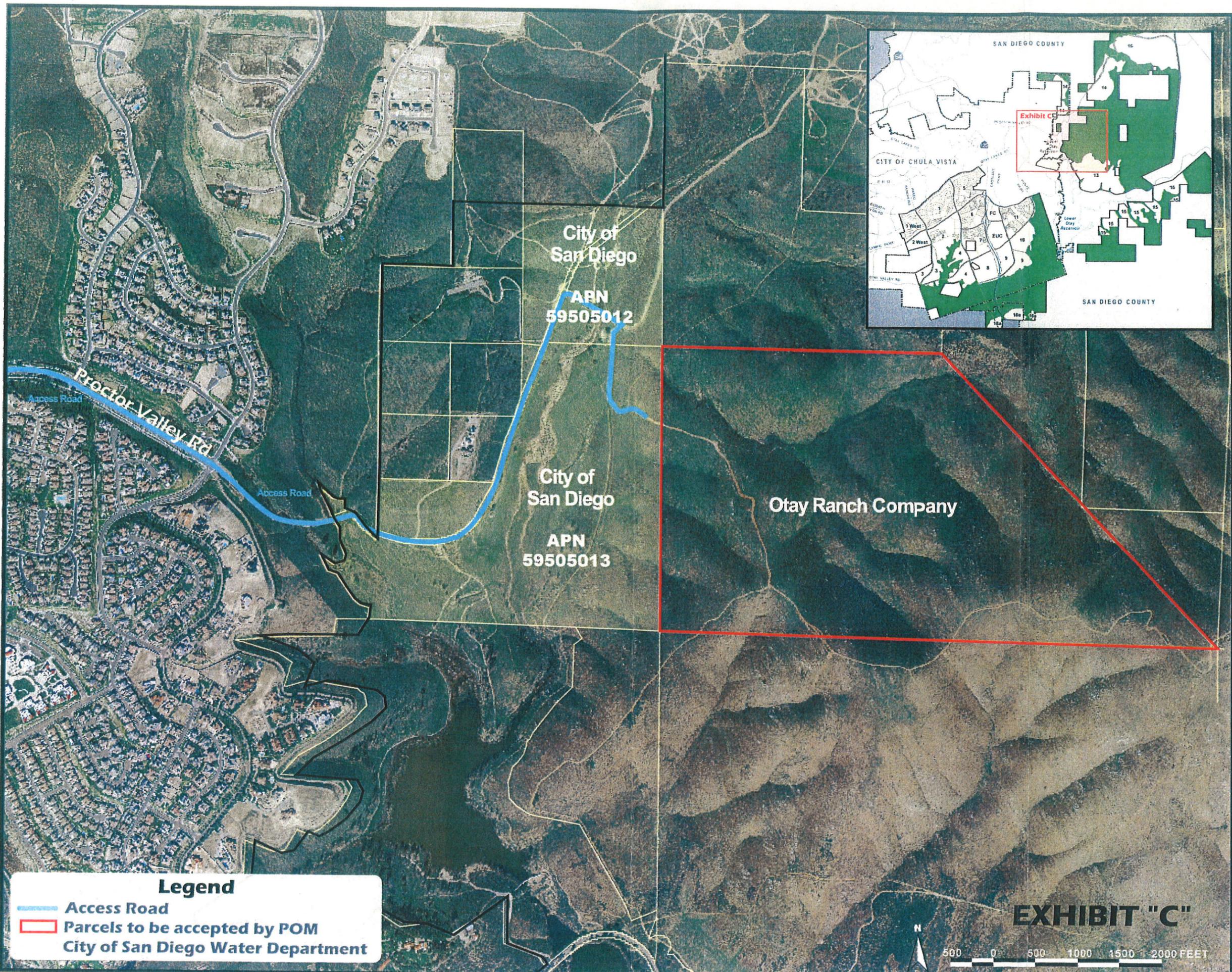
## Legend

-  Access Road
-  Parcels to be accepted by POM
- City of San Diego Water Department



600 0 500 1000 1500 2000 FEET

# EXHIBIT "B"



City of San Diego

APN 59505012

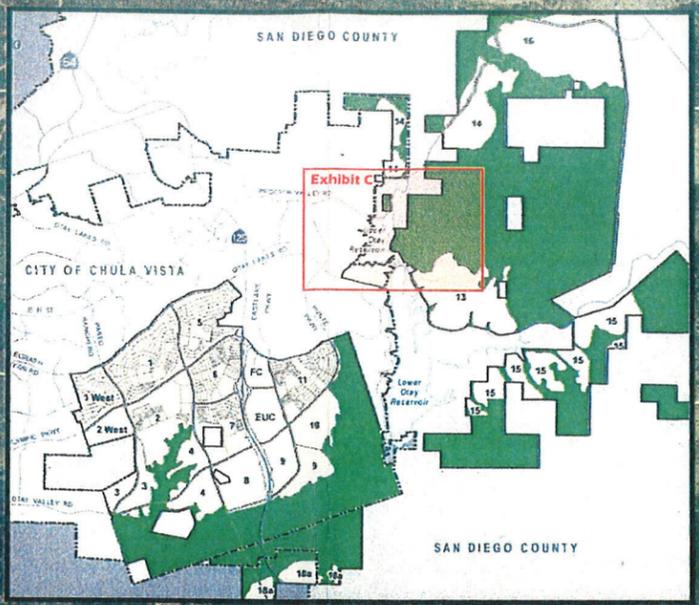
City of San Diego

APN 59505013

Otay Ranch Company

**Legend**

-  Access Road
-  Parcels to be accepted by POM City of San Diego Water Department



500 0 500 1000 1500 2000 FEET

**EXHIBIT "C"**