

## **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 October 1, 2016 ("Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

### **DEFINITIONS**

As used in this Permit, the following terms shall be defined as follows:

- A. **"Permit Area"** shall mean all or part of that certain CITY-owned real property, located in the County of San Diego, and more particularly described in **Exhibits A-C** attached hereto. The APN numbers are as follows:

APN 595-050-12  
APN 595-050-13  
APN 598-010-08  
APN 598-070-01  
APN 647-020-11  
APN 647-030-02  
APN 647-080-01  
APN 647-080-02  
APN 647-090-01  
APN 647-130-02

- B. **"Permit Fee"** Fees under this permit will be waived.
- C. **"Permit Use"** shall mean the non-exclusive use of the Permit Area for the purposes of access to the Otay Ranch Preserve parcels using existing dirt roads for the purpose of implementing management and monitoring of the biological resources on Otay Ranch Preserve parcels located immediately adjacent and/or surrounding the Permit Area. The roads will be used to complete biological surveys, enhancement/restoration projects (as needed), maintenance and monitoring, and basic stewardship on POM managed lands to implement the Otay Ranch Resource Management Plan. The proposed activities are consistent with the City and County's approved respective Multiple Species Conservation Program (MSCP) Plans.

No other uses area allowed unless specifically authorized in writing by the City.

- D. **"PERMITTEE'S Address for Notices"** shall be:

Gary Halbert  
City of Chula Vista  
276 Fourth Avenue  
San Diego, CA 91910  
Tel: (619) 476-2329

Christine Sloan  
County of San Diego Department of Parks and Recreation  
5500 Overland Ave., Suite 410  
San Diego, CA 92123  
Tel: (858) 966-1370

- E. **“Rent”** Rent under this permit will be waived.
- F. **“Term”** shall mean thirty seven (37) years.

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

1. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEES, its officers, employees, agents, contractors, invitees, and guests to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.
2. Use of Permit Area. PERMITTEES may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY’S prior written consent in each instance.
3. Access. Vehicle access allowed on authorized roads only; no off-road activity permitted without notice. Gates shall remain locked at all times except when accessing or leaving the sites.
4. Governmental Approvals. By entering into this Permit, neither CITY nor CITY’S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEES’ use of the Permit Area. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
5. CITY’S Consent, Discretion. Whenever required under this Permit, CITY’S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee (“City Manager”), unless otherwise expressly provided, without need for further resolution by the City Council. CITY’S discretionary acts hereunder shall be made in the City Manager’s discretion, unless otherwise expressly provided. All references to “City Manager” herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration CITY operates under the mayor-council (commonly referred to as “strong mayor”) form of governance pursuant to Article XV of The City Charter of the City of San Diego, California.
6. Term. The Term shall commence on the Effective Date. The Term shall be thirty seven

(37) years.

7. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY with 180 days prior written notice, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEES as a result of such revocation or the termination of this Permit. PERMITTEES expressly waive any claim for expense or loss which PERMITTEES might incur as a result of CITY'S revocation or termination of this Permit.
8. Holdover. If PERMITTEES continue to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEES any rights in or to the Permit Area. If PERMITTEES continue to occupy the Permit Area after the expiration or earlier termination of this agreement it constitutes a month-month tenancy, and all other terms and conditions of this permit shall continue in full force and effect until either the CITY or the PERMITTEES terminate the agreement.
9. Termination. PERMITTEES or CITY may terminate this Permit at any time, with 180 day written notice, for any reason. Permit to expire 30 days after completion of the project.
10. Restore and Vacate. Prior to the expiration or PERMITTEES' earlier termination of this Permit, PERMITTEES shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier termination immediately vacate the Permit Area. Upon CITY'S termination of this Permit, PERMITTEES shall immediately cease all operations on the Permit Area and as soon as practicable therefore restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and vacate the Permit Area.
11. 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. PERMITTEES 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 PERMITTEES' use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEES 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.
12. Maintenance of the Permit Area. CITY shall at no time during the Term be required to make any improvements or repairs to the Permit Area. PERMITTEES shall keep the Permit Area free and clear of rubbish, debris and litter caused by the Permit Use.
13. Inspection. CITY may at all times enter and inspect the Permit Area.
14. Utilities. PERMITTEES shall order, obtain, and pay for all utilities and service and

installation chargers in connection with its use of the Permit Area.

15. Improvements/Alterations. PERMITTEES shall not construct any permanent improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
16. Insurance. PERMITTEES represents and warrants to CITY that it is self-insured against public liability and property damage claims for at least two million dollars (\$2,000,000) combined single limit liability per occurrence.
17. Indemnification. PERMITTEES shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEES' officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEES' use of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEES' duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.
18. PERMITTEES' Risk. PERMITTEES shall bear all risks and liability to PERMITTEES arising out of or in any manner directly or indirectly connected with the PERMITTEES' use of the Permit Area, and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

Precautionary Note: PERMITTEES shall pay special attention to potentially hazardous weather occurrences such as "Red Flag Warning" events as declared by the National Oceanic and Atmospheric Administration (NOAA) when planning outdoor activities. Prudent re-scheduling may be warranted.

A "Red Flag Warning" means that "critical fire weather conditions are either occurring now, or will shortly. A combination of strong winds, low relative humidity, and warm temperatures will contribute to extreme fire behavior." See: <http://www.wrh.noaa.gov/sgx/>.

19. No Nuisance. PERMITTEES shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
20. Assignment and Sublicense. PERMITTEES shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent.
21. Signs. PERMITTEES shall not erect or display any banners, pennants, flags, posters,

signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEES shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEES' cost.

22. Encumbrances. PERMITTEES shall keep the Permit Area, and any CITY-owned property of which the Permit Area is a part, 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 PERMITTEES' 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 Permit Area pursuant to and in the manner provided under Paragraph 18.
23. Compliance with Laws. PERMITTEES shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEES' use of the Permit Area.
24. Taxes. PERMITTEES shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEES or the Permit Area by reason of PERMITTEES' use of the Permit Area, including without limitation licenses and permits. PERMITTEES' payment for such taxes, fees, and assessments shall not reduce any payment due CITY.
25. Hazardous Substances. PERMITTEES shall not allow the installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Permit Area. PERMITTEES and PERMITTEES' agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. PERMITTEES shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
  - 25.1 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. 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 is hereby incorporated

into this Permit.

- 25.2 Remediation. If PERMITTEES' use of the Permit Area results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, PERMITTEES shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 25.3 Removal. If PERMITTEES or Permittees' contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Permit Area, PERMITTEES and/or Permittees' contractors or agents shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Permit Area. PERMITTEES shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- 25.4 Indemnity. PERMITTEES shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEES' use of the Permit Area, including without limitation costs of environmental assessments; costs of regulatory remediation oversight; costs of remediation and removal; any necessary CITY response costs; all fines, penalties or fees assessed by any regulatory agency; damages for injury to natural resources, PERMITTEES' elected officials, officers, employees, invitees, guests, agents, or contractors, or the public; and all costs of any health assessments or health effect studies.
- 25.5 Notice of Release. If PERMITTEES know or have reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Permit Area, PERMITTEES shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. PERMITTEES shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEES knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEES shall take all actions necessary to alleviate the danger. PERMITTEES shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.
- 25.6 Environmental Assessment. Upon reasonable cause to believe that PERMITTEES'

use of the Permit Area ("PERMITTEES' Operations"), resulted in any hazardous substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area 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 PERMITTEES' sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEES' Operations on, in, from or under the Permit Area, 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, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEES shall cause, or if PERMITTEES fail to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental law and regulations are achieved, and PERMITTEES shall pay all costs and expenses therefor.

- 25.7 Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of PERMITTEES' 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. CITY'S waiver of a breach shall not be a waiver of any other breach. Any waiver of a breach must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any breach shall not waive the use of any other right or remedy for the same breach or for another or later breach. CITY'S acceptance of any rents shall not be a waiver of any breach preceding the rent payment. CITY'S failure to discover a breach or take prompt action to require the correction of any breach shall not result in an equitable estoppel, but CITY may at any and all times require the correction of the breach.
26. Cumulative Remedies. CITY'S rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY'S rights or remedies at law or in equity.
27. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
28. Joint and Several Liability. If PERMITTEES are comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally

liable for the performance of each and every obligation of PERMITTEES under this Permit.

29. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEES or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEES or any other party or entity.
30. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEES' use of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
31. Legal Proceedings. If any party brings an action or proceeding against another party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEES in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEES shall pay all of CITY'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.
32. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEES at PERMITTEES' Addresses for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO  
Attention: Nicole McGinnis, Public Utilities Department  
Address: 525 B Street (MS 906)  
San Diego, California 92101  
Phone (619) 533-4101

With a copy by First Class Mail to:

SAN DIEGO CITY ATTORNEY  
Attn: Real Property Section  
1200 Third Avenue, Suite 1100  
San Diego, California 92101-4106

33. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are 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 Permit, 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 represents and warrants 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.

34. Acceptance of Permit Area. By signing this Permit, PERMITTEES represent and warrant that they have independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEES further represent and warrant that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEES are relying solely on their own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEES accept the Permit Area in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to the Effective Date. PERMITTEES shall not hold CITY responsible for any defects in the Permit Area. PERMITTEES accept and assume all risk of harm to all persons and property, including without limitation PERMITTEES' employees, from any defects in the Permit Area, and shall be solely responsible therefore.

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

Date: 9/15/16

Entity: CITY OF CHULA VISTA

BY:   
Name: Gary Halbert  
Title: City Manager

Date: 9/15/16

Entity: COUNTY OF SAN DIEGO, DEPARTMENT  
OF PARKS & RECREATION

BY: Christine A. Sloan

Name: Christine Sloan

Title: Chief, Resource Management Division

Date: 9/27/16

THE CITY OF SAN DIEGO, a California municipal  
corporation

BY: [Signature]

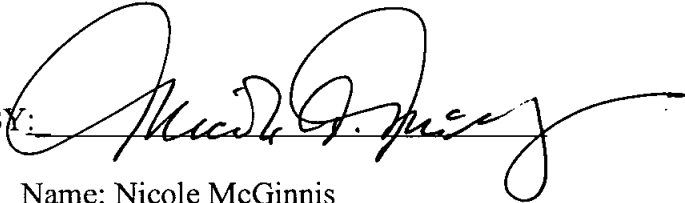
Name: Cybele Thompson

Title: Director, Real Estate Assets

*Environmental Analysis Section Environmental Clearance:*

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

Date: 8/23/14

BY: 

Name: Nicole McGinnis

Title: Senior Planner, Public Utilities Department

*Approved as to Form and Legality:*  
JAN I. GOLDSMITH, City Attorney

Date: 9/28/16

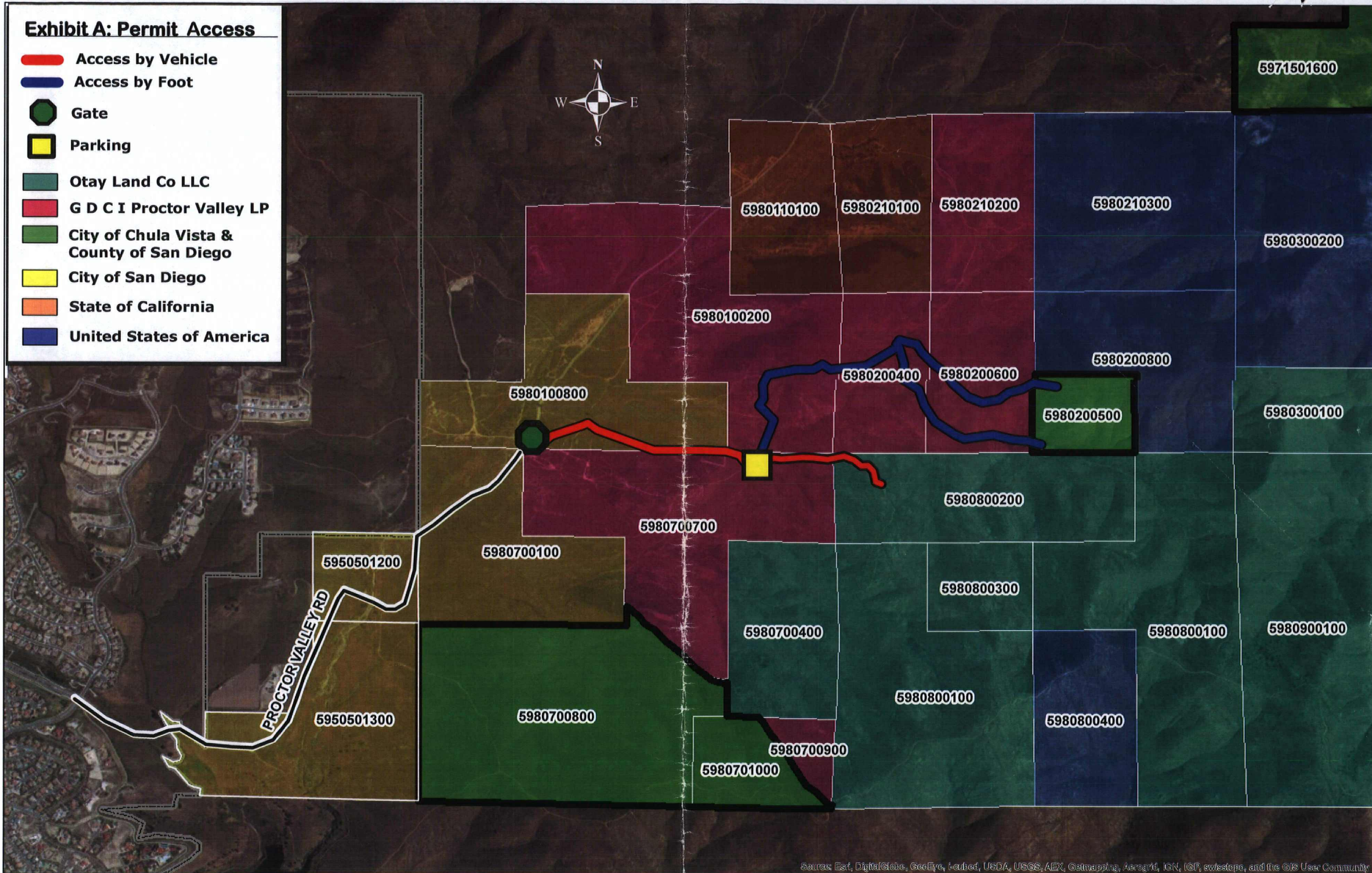
BY: 

Name: Ray Palmucci

Title: Deputy City Attorney

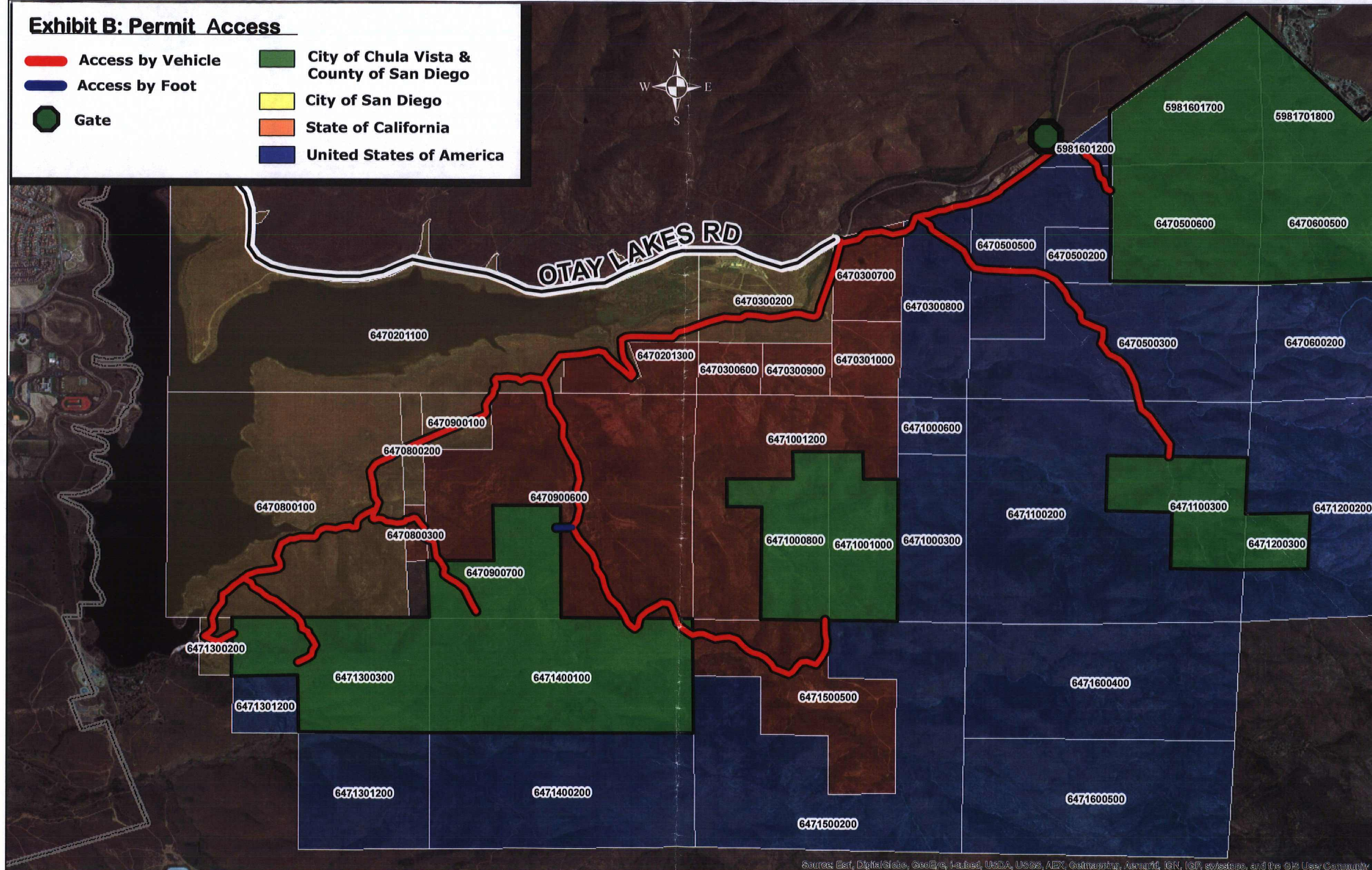
## Exhibit A: Permit Access

-  Access by Vehicle
-  Access by Foot
-  Gate
-  Parking
-  Otay Land Co LLC
-  G D C I Proctor Valley LP
-  City of Chula Vista & County of San Diego
-  City of San Diego
-  State of California
-  United States of America



## Exhibit B: Permit Access

- Access by Vehicle
- Access by Foot
- Gate
- City of Chula Vista & County of San Diego
- City of San Diego
- State of California
- United States of America



# Exhibit C: Permit Access

- Access by Vehicle
- Access by Foot
- Gate
- Parking
- Otay Land Co LLC
- G D C I Proctor Valley LP
- City of Chula Vista & County of San Diego
- City of San Diego
- State of California
- United States of America

