

RESOLUTION NO. 2016-084

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CHULA VISTA ADOPTING MITIGATED NEGATIVE
DECLARATION (IS-15-006) AND APPROVING A WETLAND
RESTORATION AGREEMENT BETWEEN HOMEFED
CORPORATION AND THE CITY OF CHULA VISTA, AND
AUTHORIZING THE MAYOR TO EXECUTE SAID
AGREEMENT

WHEREAS, HomeFed desires to provide wetland mitigation necessary to complete grading operations for Villages 3 and 8 West in the short term and the rest of its villages (Villages 8 East, 9 and 10) in the long term; and

WHEREAS, wetland mitigation credits within existing mitigation banks are extremely limited at this time; and

WHEREAS, HomeFed proposes to restore existing disturbed wetlands to mitigate for its wetland impacts, but lacks property in a suitable location to do so; and

WHEREAS, the City owns approximately 300 acres of land in the Lower Otay River Valley Watershed that is ideal for restoration due to its location at the top of the river near the dam and its high level of disturbance from previous sand and gravel mining; and

WHEREAS, HomeFed proposes to restore approximately 100 acres of wetland and upland habitat within the City's 300 acre parcel (the "Restoration Site") in accordance with the subject Wetland Restoration Agreement; and

WHEREAS, HomeFed proposes to address Resource Agency permitting requirements through the approval of a Habitat Mitigation and Monitoring Plan (HMMP) that would mitigate for impacts for Villages 3 and 8 West in the short term and establish a mitigation bank with the remainder of the wetlands within the property; and

WHEREAS, the City is desirous of completing the portion of Heritage Road between Olympic Parkway and Main Street which is part of Village 3 and also requires mitigation of associated wetland impacts; and

WHEREAS, the City would like to implement the City's Greenbelt trail system and Otay Valley Regional Park trails system through the Restoration Site at no cost to the City; and

WHEREAS, the City will secure mitigation area sufficient to mitigate wetland impacts for its University and Innovation District project, at no cost to the City, in accordance with the subject Wetland Restoration Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chula Vista does hereby find and determine, as follows:

I ENVIRONMENTAL DETERMINATION

The Director of Development Services has reviewed the proposed project for compliance with the California Environmental Quality Act and has conducted an Initial Study, IS-15-006 in accordance with the California Environmental Quality Act. Based upon the results of the Initial Study, the Director of Development Services has determined that the project could result in significant effects on the environment. However, revisions to the project made by or agreed to by the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur; therefore, the Director of Development Services has prepared a Mitigated Negative Declaration, IS-15-006.

II. CERTIFICATION OF COMPLIANCE WITH CEQA

The City Council does hereby find that the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (IS-15-006) has been prepared in accordance with requirements of the California Environmental Quality Act, the State California Environmental Quality Act Guidelines, and the Environmental Review Procedures of the City of Chula Vista. The Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (IS-15-006) are available for public review in the Development Services Department.

III. INDEPENDENT JUDGEMENT OF CITY COUNCIL

The City Council does hereby find on the basis of the whole record before it, including the initial study and comments received for the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (IS-15-006), that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis.

BE IT FURTHER RESOLVED, that the City Council of the City of Chula Vista does hereby adopt Mitigated Negative Declaration No. IS-15-006 and approve the Agreement Regarding Otay River Valley Restoration, attached hereto and made part hereof as Exhibit 1, between the City of Chula Vista and HomeFed for restoration of wetland and upland habitat on City-owned land in the Otay River Valley.

BE IT FURTHER RESOLVED, that the Mayor of the City of City of Chula Vista is hereby authorized and directed to execute said Agreement on behalf of the City of Chula Vista.

Presented by



Kelly G. Broughton, FASLA
Director of Development Services

Approved as to form by



Glen R. Googins
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 17th day of May 2016 by the following vote:

AYES: Councilmembers: Aguilar, Bensoussan, McCann, Miesen, and Salas

NAYS: Councilmembers: None

ABSENT: Councilmembers: None



Mary Salas, Mayor

ATTEST:



Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Resolution No. 2016-084 was duly passed, approved, and adopted by the City Council at a regular meeting of the Chula Vista City Council held on the 17th day of May 2016.

Executed this 17th day of May 2016.



Donna R. Norris, CMC, City Clerk

AGREEMENT REGARDING OTAY RIVER VALLEY RESTORATION

THIS AGREEMENT REGARDING OTAY RIVER VALLEY RESTORATION ("Agreement") is entered into and effective as of May, 2016 (the "Effective Date"), by and between the CITY OF CHULA VISTA, a political subdivision of the State of California ("City") and HOMEFED CORPORATION, a Delaware corporation ("HomeFed"). The City and HomeFed may be referred to individually as a "Party" and collectively as the "Parties" throughout this Agreement.

RECITALS:

A. HomeFed, through its subsidiaries, including without limitation (i) Otay Land Company, LLC, a Delaware limited liability company, (ii) HomeFed Otay Land II, LLC, a Delaware limited liability company, (iii) HomeFed Village 2 West, LLC, a Delaware limited liability company; and (iv) Flat Rock Land Company, LLC, a Delaware limited liability company owns or controls undeveloped land in the area of the City of Chula Vista known as Otay Ranch, generally depicted on Exhibit A attached hereto ("**HomeFed Undeveloped Property**").

B. The City owns undeveloped land, and through recorded Irrevocable Offers of Dedication, has the right to acquire title to additional undeveloped land in Otay Ranch within the University/RTP Planning Area, depicted on Exhibit A attached hereto ("**University Property**").

C. In connection with the development of the HomeFed Undeveloped Property and University Property, the Parties anticipate unavoidable impacts to jurisdictional waters and wetlands necessitating the issuance of permits and approvals from various government agencies with jurisdiction over such resources, including without limitation the U.S. Army Corps of Engineers ("USACE"), the California Department of Fish & Wildlife ("CDFW") and the San Diego Regional Water Quality Control Board ("RWQCB") (collectively the "**Resource Agencies**"). Such permits and approvals collectively shall be referred to herein as "**Resource Agency Permits**."

D. In order to satisfy anticipated compensatory mitigation requirements imposed pursuant to HomeFed Undeveloped Property and University Property Resource Agency Permits, the Parties desire to work cooperatively (subject to the City's full land use discretion and police power authority) in the creation, processing and implementation of a habitat mitigation and monitoring plan and associated permits and approvals (collectively "**HMMP**") necessary to restore native habitat within the Otay River Valley on land owned by the City and depicted on Exhibit B attached hereto ("**Restoration Area**"). A draft HMMP, dated April 2016, prepared by ICF International, which the Parties acknowledge is preliminary in nature and subject to further revision including as stated herein, is attached hereto as Exhibit C.

E. In order to satisfy mitigation requirements to be imposed in conjunction with the City's future pursuit of University Property Resource Agency Permits and HomeFed's Undeveloped Property Resource Agency Permits, the Parties shall establish a mitigation bank

based on the HMMP to provide advanced mitigation credits within an agency-approved service area. The Parties desire to work cooperatively (subject to the City's full land use discretion and police power authority) in the creation, processing and implementation of said mitigation bank.

F. The Restoration Area is designated open space under the City General Plan, Otay Ranch Resource Management Plan, and is within the City's Multiple Species Conservation Plan (MSCP) hardline preserve area. The Restoration Area is unique river channel land located below Savage Dam for Lower Otay Lake. The proposed HMMP (to be processed and implemented at HomeFed's sole cost) would restore over 100 acres of primary and secondary river channels, low and high flood plain terraces, seasonal ponds, including transitional upland habitat, which will improve the hydrological function of this portion of the Otay River Valley channel. Restoration of this portion of the Otay River Valley is also essential to the effective restoration and enhancement of downstream areas and will provide overall aesthetic and environmental enhancement of the river channel area by creating habitat for target sensitive species in the region including least Bell's vireo, southwestern willow flycatcher, and arroyo toad.

G. The Restoration Area is publicly owned land intended for open space and habitat preservation, although it is currently in a disturbed state. Restoration of the subject property will enable the City to satisfy anticipated Resource Agency Permit mitigation requirements for the future development of the University Property, at no public expense. Implementation of the HMMP will also allow HomeFed to proceed with the development of the HomeFed Undeveloped Property, a portion of which development includes segments of Heritage Road that are important to the City's transportation system network in the area. The Otay River Valley habitat restoration contemplated by this Agreement, and fully funded by HomeFed, will provide significant aesthetic and environmental benefits through the restoration of a critical upstream segment of the Otay River Valley. Moreover, as mitigation for impacts within the developable portions the HomeFed Undeveloped Property, the University Property and potentially other portions of Otay Ranch, the HMMP will enable the public and private improvements to proceed as contemplated by the City's General Plan, Otay Ranch General Development Plan, and various Sectional Planning Area Plans, as well as foster the development of the planned four-year university within Otay Ranch.

NOW, THEREFORE, in consideration of the above Recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A G R E E M E N T :

1. Resource Agency Processing. HomeFed, at its sole expense, shall process Resource Agency Permits, required to obtain approval of the HMMP for the Restoration Area in satisfaction of Resource Agency Permit requirements for the HomeFed Undeveloped Property (which includes satisfaction of Resource Agency mitigation requirements for segments of Heritage Road to be constructed within the boundaries of Village 3 of the Undeveloped Property) and University Property. HomeFed shall submit the draft HMMP to the City for review and comment prior to its formal approval from any other government agency, and shall obtain the consent of the City for any material modifications of the HMMP thereafter. The City agrees to cooperate with HomeFed in the HMMP approval process, including without limitation the execution of permit

applications and consent forms necessary as the owner of the Restoration Area. The Parties agree to cooperate and act in good faith to achieve the prompt and cost-effective approval of the HMMP from the Resource Agencies. If and when issues arise, the Parties agree to meet and confer to resolve any such issues in a timely manner.

2. City Processing. The Parties acknowledge that the restoration work contemplated by the HMMP to occur within the Restoration Area requires environmental review by the City under the California Environmental Quality Act ("CEQA"), as well as the issuance of one or more discretionary City permits. The City agrees (subject to the City's full land use discretion and police power authority) to expeditiously process such applications. It is understood that HomeFed will cause to be prepared, at its expense, all of the required technical studies and exhibits (by qualified experts) that the City deems necessary, as well as prepare the draft and final versions of the Environmental Document. HomeFed understands and agrees that the City reserves the right to exercise its discretion as to all matters which the City is by law entitled or required to exercise its discretion with respect to the HMMP, including but not limited to CEQA and similar laws.

3. HMMP Implementation. Provided that the HMMP is approved by all government agencies with jurisdiction over the restoration activities contemplated therein on terms and conditions acceptable to HomeFed and the City, HomeFed agrees to fund the implementation of the HMMP, including long-term maintenance costs, and the City agrees to allow the use of Restoration Area for said purposes. Since the Restoration Area is within the boundaries of the Otay Ranch Resource Management Plan (RMP) area, and thereby subject to the conduct of select, periodic maintenance and management activities by the Preserve Steward, as warranted under the RMP and the Steward's approved Annual Work Plans, those activities would, foregoing any unforeseen circumstances, continue to be the responsibility of the City/County Preserve Owner-Manager (POM) and the Steward, and funded through the Otay Ranch Preserve Community Facilities District (CFD). Any costs, including near- or long-term maintenance costs associated with implementation of the HMMP's components and features will remain the responsibility of HomeFed.

4. Access to Restoration Area. The City hereby agrees to grant necessary right of entry for and access to the Restoration Area to HomeFed and its consultants and agents to conduct studies, surveys and undertake such activities as are reasonably necessary to process and implement the HMMP. HomeFed will timely provide to the City, to the City's reasonable satisfaction, the scope of work and estimated construction schedule documentation regarding implementation of the HMMP. Terms regarding HomeFed's indemnification, hold harmless, defense of any related claims, and insurance obligations to implement the HMMP in the Restoration Area are as follows:

4.1. Indemnification.

4.1.1 HomeFed shall fully protect, indemnify, defend (with counsel reasonably acceptable to City) and hold the City and the City's officers, affiliates, employees, representatives, and agents free and harmless from and against any and all claims, damages, judgments, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs, of whatever character, nature and kind, whether directly or indirectly arising from or connected with this Agreement and/or resulting from HomeFed's

processing and implementation of the HMMP or related inspections, testing or studies. HomeFed's indemnification obligations set forth herein shall survive the completion and /or certification of the activities to implement the HMMP, and shall survive the termination of this Agreement. This indemnity obligation stated in section 4.1.1 does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys' fees) arising from the willful misconduct or gross negligence of the City, its officers, employees, or agents.

4.1.2 The City shall not have any obligation to protect, indemnify, hold harmless or defend HomeFed, including its officers, members, directors, shareholders, participants, partners, affiliates, employees, representatives, invitees, agents and contractors against any claims, damages, judgments, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs, resulting from HomeFed's processing and implementation of the HMMP or related inspections, testing or studies.

4.1.3 HomeFed's obligation to protect, indemnify, hold harmless or defend as stated in this Section 4.1 shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or representatives, or received by HomeFed its directors, officials, officers, employees, agents, and/or representatives.

4.2. Insurance Coverage.

4.2.1 Prior to any entry upon the Restoration Area, HomeFed and its contractors, subcontractors, consultants, agents, representatives or employees shall deliver to the City certificates of insurance as evidence that HomeFed and its contractors, subcontractors, consultants, agents, representatives or employees are carrying the insurance described in this Section 4.2 below.

4.2.2 Commercial General Liability Insurance. A policy of commercial general liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal and advertising injury coverage.

4.2.3 Automobile Liability Insurance. Business automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate and insuring against liability for claims arising out of ownership, maintenance or use of any owned, hired or non-owned automobiles.

4.2.4 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by the insured in the conduct of its operations on the Restoration Area together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000).

4.2.5 General.

4.2.5.1 Insurance Companies. Insurance required to be maintained shall be written by companies authorized to do business in California and San Diego County and

having a "General Policyholders Rating" of at least "A-VII" as set forth in the most current issue of "Best's Key Rating Guide."

4.2.5.2 Certificates of Insurance. HomeFed shall deliver to the City certificates of insurance, including applicable endorsements (e.g., Additional Insured Endorsement), for all insurance required to be maintained by HomeFed and its contractors, subcontractors, consultants, agents, representatives or employees in the form of the ACORD standard certificate of insurance (or in a form acceptable to the City in its sole discretion) prior to entry onto the Restoration Area. HomeFed shall, prior to expiration of any policy, furnish the City with certificates of renewal or "binders" thereof. If HomeFed and its contractors, subcontractors, consultants, agents, representatives or employees fail to maintain any insurance required in this Agreement, the HomeFed shall be liable for all losses and costs suffered or incurred by the City (including litigation costs and attorneys' fees and expenses) resulting from said failure, and the City may terminate this Agreement.

4.2.5.3 Additional Insureds. The City shall be named as an additional insured under all of the policies required by this Section 4.2 (other than workers' compensation), and all such policies shall provide for severability of interest. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) Calendar Days' prior written notice to the City (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) Calendar Days' notice has been given to the City). Liability Additional Insured coverage benefitting the City (including its elected officials, representatives, agents and employees) shall not exclude products or completed operations.

4.2.5.4 Primary Coverage. The general liability insurance maintained herein shall be primary to, and receive no contribution from insurance of the City, to the extent HomeFed has agreed to indemnify, defend and hold the City harmless pursuant to Section 4.1 above. The limits of insurance maintained by HomeFed shall not limit HomeFed's liability under this Agreement.

4.2.5.5 Revisions to Coverage Amounts. City, at its discretion, may require the revision of amounts and coverage as to any insurance stated above at any time during the term of this Agreement by giving HomeFed sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Restoration Area. HomeFed also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Agreement

4.2.5.6 Notification of Incidents. HomeFed shall notify the City within twenty-four (24) hours after the occurrence of any accidents or incidents at the Restoration Area which could give rise to a claim under any of the insurance policies required herein.

4.2.5.7 Waivers of Subrogation. HomeFed's insurer(s) will provide Waiver of Subrogation Endorsements in favor of the City for each required policy providing coverage for the term required by this Agreement, except for Worker's Compensation coverage. In addition, HomeFed waives any rights it may have or may obtain to subrogation for a claim against the City.

5. Mitigation Bank Establishment and Administration. The preliminary analysis contained in the draft HMMP indicates that the Restoration Area, following implementation of restoration activities, will yield habitat in excess of the anticipated mitigation requirements of the Resource Agency Permits for the HomeFed Undeveloped Property and University Property ("**Excess Mitigation Acreage**"). The Parties agree that following the issuance of Resource Agency Permits necessary to develop Villages 3 and 8 West, and in no instance later than 90 days from the execution of this Agreement, HomeFed will submit a draft Mitigation Bank Prospectus to the interagency review team ("**IRT**") and thereafter process the required documents and permits to establish a mitigation bank, at its sole cost, which would allow the sale of mitigation credits for the Excess Mitigation Acreage. HomeFed will diligently process the mitigation bank documents resulting in a final approved banking enabling instrument ("**BEI**") from the IRT no later than 36 months from the date the application is submitted, subject to delay caused by circumstances outside the reasonable control of the Parties.

The City, HomeFed or a third-party mutually acceptable to the Parties shall be named as the mitigation banker in the IRT submittals. The Parties acknowledge and agree that the mitigation banker shall actively market the mitigation bank credits and act in good faith in the expeditious sale of Excess Mitigation Acreage credits to reimburse HomeFed, as set forth below, and to generate revenues for the City as soon as reasonably practicable. In the event HomeFed objects to the performance of the mitigation banker or sale of Excess Mitigation Acreage credits, the Parties agree to meet and confer in good faith to resolve such objections. City must approve the final sales terms of any transaction involving Excess Mitigation Acreage credits.

HomeFed shall submit the mitigation bank documentation to the City for review and acceptance prior to its formal approval from any other government agency, and shall obtain the consent of the City for any material modifications of the mitigation bank thereafter. The City shall retain fee title to the real property relating to the sale of any and all mitigation credits for the Excess Mitigation Acreage.

The application to the IRT for the mitigation bank will include a reservation for credits to be used by the City and HomeFed, in a quantity mutually agreed by the Parties, sufficient to mitigate unavoidable impacts to jurisdictional waters and wetlands within the University Property and the HomeFed Undeveloped Property (with the exception of Village 3 and 8 West, which will be covered by Phase 1 and 2 of the HMMP prior to establishment of the mitigation bank) at no cost to the City.

The proceeds from future Excess Mitigation Acreage credit sales, if any, would be applied first to reimburse HomeFed for all of its reasonable costs incurred in creating, processing and implementing the HMMP and mitigation bank (which reasonable costs will be agreed to by the City after a review of adequate documentation provided by HomeFed regarding such costs) for the portion of the site that applies to Excess Mitigation Acreage credit sales (i.e. those credits that are not utilized for the satisfaction of Resource Agency Permits issued in connection with the University Property and HomeFed Undeveloped Property) (hereafter "**Reimbursable Costs**"). Reasonable Costs to be reimbursed to HomeFed for creating, processing and implementing the HMMP and mitigation bank shall not include those proportional costs or expenses that HomeFed incurs or pays to (i) prepare, process and implement the HMMP, and (ii) create the mitigation bank acreage, for that portion of the Restoration Area to be used to satisfy the Resource Agency

mitigation requirements relating to the Undeveloped Property and the University Property. Mitigation credit sales proceeds in excess of said reasonable cost reimbursement amounts to HomeFed, if any, will be retained solely by the City. The City will reimburse HomeFed the Reimbursable Costs only as proceeds from the final sales of Excess Mitigation Acreage are received and funds from such sales have been deposited with the City without restriction on the City's use of such funds. Only the proceeds from the final sales of Excess Mitigation Acreage shall be used to reimburse the Reimbursable Costs. No other City funds or monies shall be used to reimburse the Reimbursable Costs.

Within sixty (60) days of Resource Agency confirmation that HomeFed has satisfied a condition of a Resource Agency Permit approval through the use of mitigation land within the Restoration Area, HomeFed shall record an irrevocable offer of dedication ("IOD") in favor of the City in a form acceptable to the Parties. The IOD shall offer to the City at no expense fee title to jurisdictional waters owned by HomeFed, or an affiliate, immediately west of the Restoration Area in the Otay River Valley, the location of which shall be mutually agreed upon by the Parties, in an amount equal to the acreage approved by the Resource Agencies within the Restoration Area as mitigation satisfying Resource Agency Permits for HomeFed Undeveloped Property. The Parties anticipate multiple IOD's will be recorded over time to reflect the phased nature of the permitting and development of HomeFed's Undeveloped Property.

6. Access and Trails Within and Through the Restoration Area. The Parties acknowledge that the Restoration Area is within the boundaries of the Otay Valley Regional Park Concept Plan which anticipates trail routes and connections through and adjacent to the Restoration Area, and that various entities and agencies use access routes and informal trails that currently traverse the Restoration Area. HomeFed agrees to coordinate with involved and affected agencies and parties (including but not necessarily limited to the City of Chula Vista, County of San Diego, City of San Diego, US Border Patrol, SDG&E, the Resource Agencies, and the Otay Water District) to review, design and incorporate in the HMMP necessary trails and access routes within and through the Restoration Area to meet the reasonable needs of those agencies and parties, and ensure appropriate connections to related off-site routes, as permitted by the Resource Agencies. Exhibit D depicts the proposed access routes and trail corridors within and immediately adjacent to the Restoration Area that are to be included within the HMMP, now and as revised in the future, and therein accordingly authorized via approval of the HMMP by the Resource Agencies.

The Parties further acknowledge that certain components of the access and trail alignments are not fully finalized in terms of specific, final detailed alignments, and/or associated physical construction details related to actual surfacing, drainage and other attendant improvements, in a manner sufficient and necessary to construct said access and trail improvements within the HMMP area. Accordingly, HomeFed agrees to process and accomplish at its sole expense, any and all necessary entitlement, plan and environmental updates, revisions or amendments and applications required to obtain all approvals for said final alignments and surfacing, drainage and other attendant improvement details at a level sufficient to permit their construction ("Trail Approvals"). HomeFed further agrees to diligently process said applications in order to obtain Trail Approvals prior to the commencement of construction for HMMP phase 2, subject to delay caused by circumstances outside the reasonable control of HomeFed. The City agrees to expeditiously process any applications for Trail Approvals submitted by HomeFed in accordance

with City regulations and policies. HomeFed agrees to construct at its sole expense all of said final access and trail improvements within the HMMP Area in conjunction with its otherwise phased construction within the HMMP. The parties acknowledge that HomeFed has no obligation for funding trail maintenance.

7. Phased Implementation. The Parties acknowledge the significant capital outlay required to achieve the approval and implementation of the HMMP. Therefore, the Parties agree to work cooperatively with Resource Agencies to accomplish a phased HMMP implementation consistent with the anticipated long-term buildout of the HomeFed Undeveloped Property and University Property. HomeFed will diligently pursue the approval and implementation of the initial phase of the HMMP (Phases 1 and 2), which includes restoration acreage sufficient to satisfy solely: (a) the mitigation needs of Villages 3 and 8 West. Phases 1 and 2 are anticipated to be completed by February 2017 consistent with the phasing schedule stated in Chapters 5 and 8 of the final HMMP. Within 12 months of approval of the mitigation bank, HomeFed will commence construction of, and diligently pursue to completion, the first restoration phase within the mitigation bank; provided that the commencement of construction may be delayed beyond 12 months due to the limitations imposed by applicable regulations including but not limited to the Migratory Bird Treaty Act. However, in the event University Property is approved for development by the City and has applied for Resource Agency Permits prior to approval of the mitigation bank, the City may so notify HomeFed and in such event HomeFed shall commence construction of mitigation necessary to satisfy the Resource Agency Permit within 6 months of the later of issuance of said Resource Agency Permit or receipt of said notice, or as otherwise mutually agreed upon by the Parties. The size and scope of the first phase within the mitigation bank shall be in HomeFed's discretion, provided that such first phase at a minimum shall include credits sufficient to satisfy the anticipated University Property Resource Agency Permit requirements. Thereafter, the mitigation bank shall reserve such credits solely for the University Property and such credits may not be sold. The Parties agree that the mitigation bank documentation and structure shall provide that the mitigation credits for the University Property will be reserved for utilization by the City as part of the up to forty percent (40%) of the total mitigation credits for jurisdictional waters that can be released for use as mitigation credits between the time that the mitigation bank is established and approved by the IRT and the as-built construction plans for the HMMP portion related to the mitigation bank are submitted to the California Department of Fish and Wildlife. The Parties acknowledge that the City has not made application with the Resource Agencies in connection with the University Property, and therefore the precise mitigation requirements are unknown.

8. Miscellaneous Provisions.

8.1. Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to as an exhibit herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

8.2. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the Parties otherwise agree in writing.

8.3. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, both Parties having been represented by counsel in the negotiation and preparation hereof.

8.4. Paragraph Headings. All paragraph headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

8.5. Singular and Plural. As used herein, the singular of any word includes the plural.

8.6. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

8.7. Waiver. Failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

8.8. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the Parties and their successors and assigns. No other person shall have any right of action based upon any provisions of this Agreement.

8.9. Counterparts. The Parties may execute this Agreement in counterparts, which counterparts shall be construed together and have the same effect as if both Parties had executed the same instrument.

8.10. Jurisdiction and Venue. Any action or law or inequity arising under this Agreement or brought by either Party for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Diego, State of California, and both Parties hereby waive all provisions of law providing for the filing, removal or change of venue to any other court.

8.11. Further Actions and Instruments. Each Party shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings reasonably acceptable to such Party and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement, including without limitation actions necessary to remove this Agreement from the

chain of title as to all or a portion of the Property when authorized by this Agreement, provided that neither Party will be obligated to modify any rights or accept any additional obligations or liabilities in connection therewith.

8.12. Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of the Parties specifically approving the amendment.

8.13. Notices. Any notice called for in this Agreement shall be sent by hand delivery, overnight courier service, or by registered or certified mail as follows:

If to City:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attention: Development Services Director
Telephone: _____
Facsimile: _____

With a Copy to:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attention: City Attorney
Telephone: (619) 691-5037
Facsimile: (619) 409-5823

If to HomeFed:

HomeFed Corporation
1903 Wright Place, Ste. 220
Carlsbad, CA 92008
Attention: Erin Ruhe
Telephone: (760) 918-8200
Facsimile: (760) 918-8205

With a Copy to:

Allen Matkins Leck Gamble Mallory & Natsis, LLP
501 W. Broadway, 15th Floor
San Diego, CA 92101
Attention: Jeffrey A. Chine
Telephone: (619) 233-1155
Facsimile: (619) 233-1158

or such other address as a Party may inform the others of from time to time. Any such notices sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given

and received three (3) business days after the same is so addressed and mailed with postage prepaid. Notices delivered by overnight service shall be deemed to have been given upon delivery, charges prepaid to the U.S. Postal Service or private courier. Any notice or other document sent by any other matter shall be effective only upon actual receipt thereof.

8.14. No Joint Venture or Partnership. It is specifically understood by City and HomeFed that the HMMP and mitigation bank is not a joint venture or partnership between the City and HomeFed.

8.15. Authority to Execute. Each Party hereby warrants and represents that the person or persons executing this Agreement on behalf of such Party has the authority to execute this Agreement, attest to the representations set forth herein and make the warranties contained herein on behalf of the entity for which he or she is acting and has been duly authorized to do so.

8.16. Exhibits and Attachments. All Exhibits referenced within the Agreement are incorporated herein and made a part of this Agreement.


8.17. Successors and Assigns. This Agreement shall be binding on and enforceable against and by any successors, assigns, and transferees of HomeFed and the City.

***[REMAINDER OF PAGE INTENTIONALLY BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]***

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

HOMEFED:

HOMEFED CORPORATION,
a Delaware corporation

By: 

Name:

Title: President

CITY:

CITY OF CHULA VISTA,
a political subdivision of the State of California

By: _____

Name: Mary Casillas Salas

Title: Mayor

ATTEST:

By: _____

Name: Donna Norris

Title: City Clerk

APPROVED AS TO FORM:

By: _____

Name: Glen R. Googins

Title: City Attorney

EXHIBIT A
UNDEVELOPED PROPERTY AND UNIVERSITY PROPERTY

EXHIBIT A

HOMEFED UNDEVELOPED PROPERTY AND UNIVERSITY PROPERTY

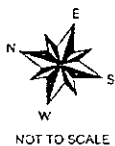
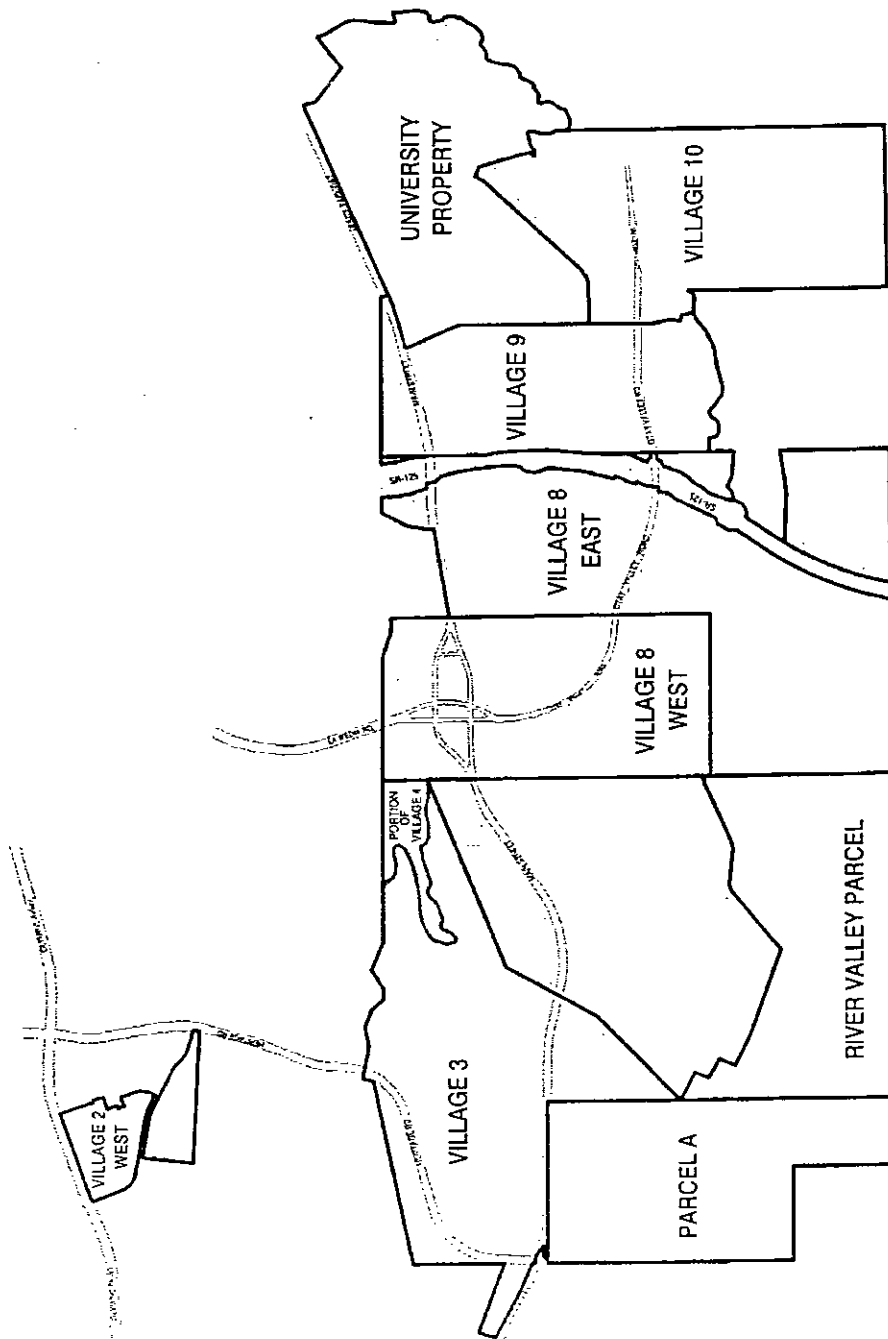


EXHIBIT B
RESTORATION AREA

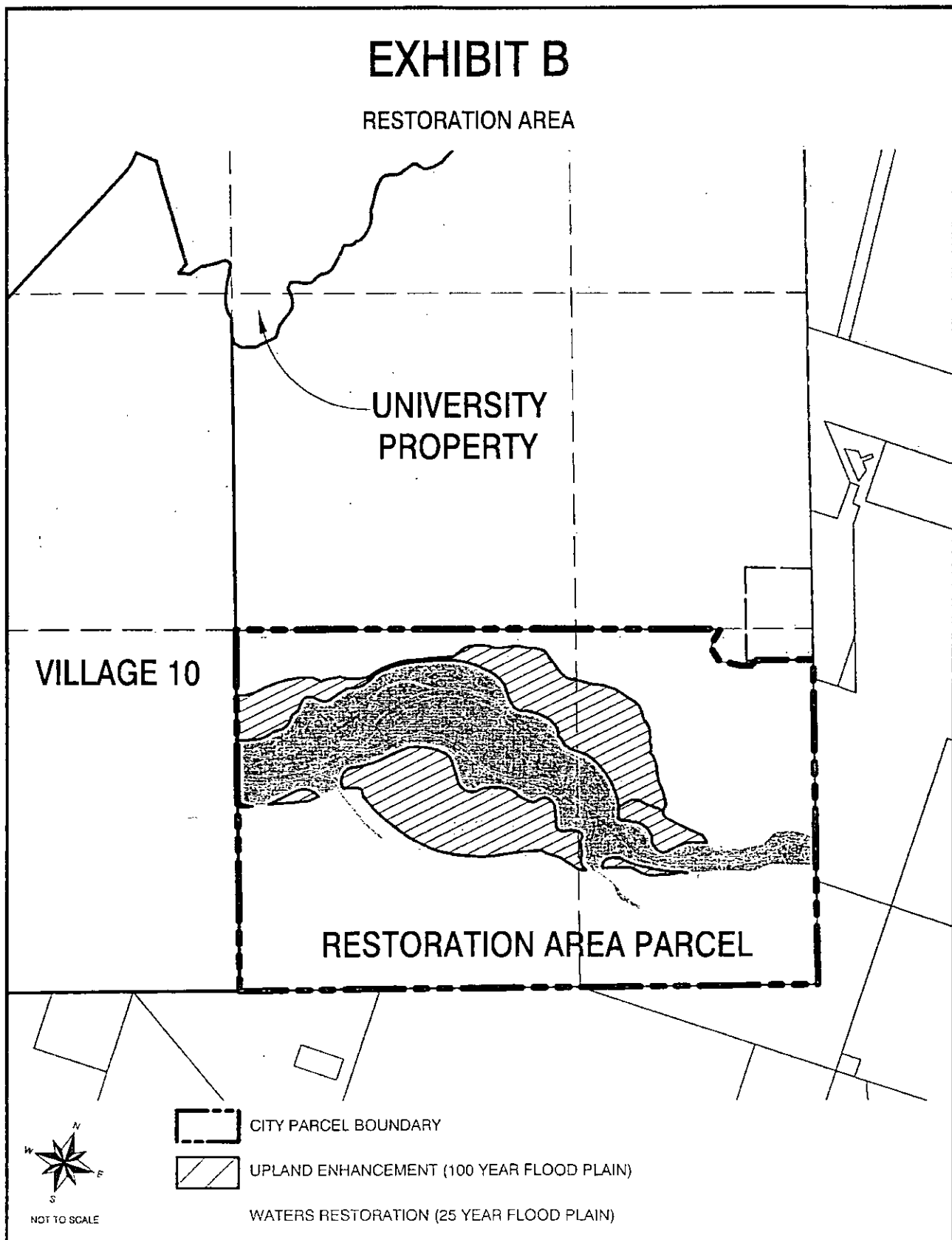


EXHIBIT C
DRAFT HMMP

EXHIBIT D
PROPOSED ACCESS ROUTES AND TRAIL CORRIDORS

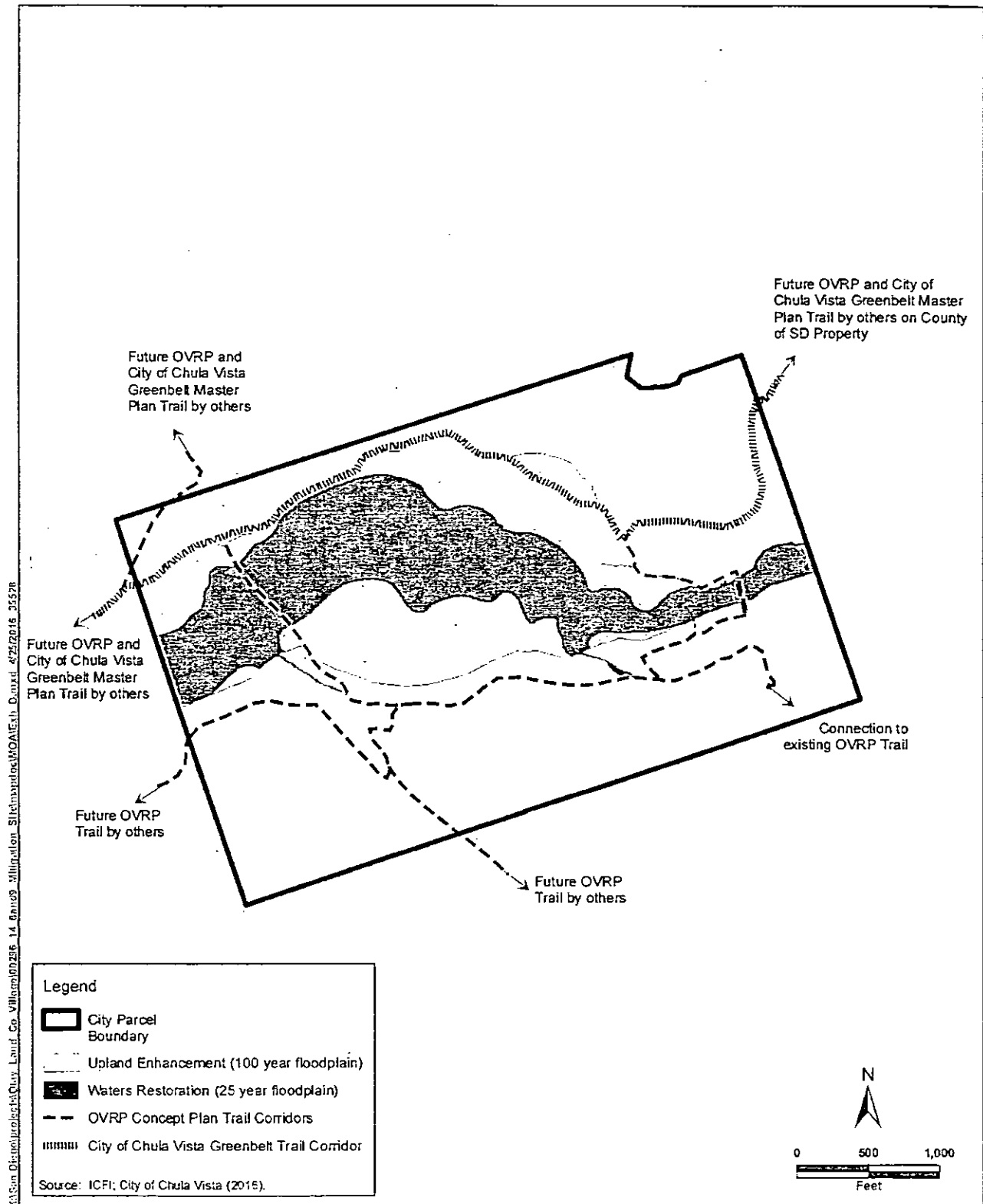


Exhibit D
Proposed Access Routes and Trail Corridors
Otay River Restoration Project