

Agreement No, OCP10-020
Irvine Ranch Lands
(TNC Endowment Agreement)

Accounting Information
TNC Center No: 2050029084
Subcenter: 0000
TNC Account No: 5076

RESTATED AND AMENDED ENDOWMENT AGREEMENT

THIS RESTATED AND AMENDED ENDOWMENT AGREEMENT ("**Agreement**"), dated this _____ day of _____, 2013 is made by and between the COUNTY OF ORANGE, a political subdivision of the State of California, ("**County**"), THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, ("**Conservancy**"), and THE ORANGE COUNTY PARKS FOUNDATION, a California public benefit corporation, ("**Foundation**"). The County, Conservancy and the Foundation may individually be referred to herein as a "**Party**," or collectively as the "**Parties**."

RECITALS

Whereas, the Conservancy has agreed to fund an endowment in the amount of Two Million Dollars (\$2,000,000) to protect and enhance the ecological and natural conservation values of publicly owned lands within the historic Irvine Ranch ("**Endowment**"); and

Whereas, this Endowment is funded with funds the Conservancy received pursuant to a pledge agreement ("**Pledge Agreement**") by and between the Conservancy and The Irvine Company, a Delaware corporation ("**TIC**"); and

Whereas, the County currently holds and invests the Endowment pursuant to a preceding Endowment Agreement dated June 29th, 2010 between the County and the Conservancy ("**Original Agreement**"); and

Whereas, the Parties desire to transfer the Endowment to the Foundation for the Foundation to use the future interest or funds derived from or accruing to the Endowment, and only the future interest or funds derived from or accruing to the Endowment, for the Purpose, as defined below; and

Whereas, the Parties desire to restate and amend the Original Agreement to effectuate the transfer of the Endowment to the Foundation.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained within this Agreement, the Parties agree as follows:

1. RESTATEMENT OF AGREEMENT

The Original Agreement is amended and restated on the terms and conditions stated in this Agreement. This Agreement supersedes all terms and conditions of the Original Agreement except as provided in Section 5, below.

2. OBJECTIVE AND ENDOWMENT MANAGEMENT

A. The Foundation shall deposit, maintain, manage and administer the Endowment as a permanent endowment, the principal of which shall be preserved intact. The Endowment and any future interest or funds derived from or accruing to the Endowment will be accounted for separately, and will be invested in a segregated account maintained by the Foundation. Future interest or funds derived from or accruing to the Endowment ("**Endowment Income**"), and the Endowment Income,

may only be used for the Purpose, as defined below. The Endowment shall be deposited, maintained, managed and administered in compliance with the County's Board of Supervisor's approved investment policy; provided, however, that the Endowment may be deposited, maintained, managed and administered in compliance with an alternative investment policy if such alternative investment policy is approved by the Conservancy in writing in advance of its use. The Conservancy may not unreasonably withhold its approval of an alternative investment policy and it shall be deemed unreasonable for the Conservancy to withhold approval of an alternative investment policy that is as conservative or more conservative than the then current investment policy of the Conservancy. The Conservancy's approval of an alternative investment policy is procedural and shall not be construed as or deemed investment advice. It shall be unreasonable for the Foundation to rely on any Conservancy approval as evidence of the adequacy or quality of an alternative investment policy and the Foundation may not rely on any such approval in any manner that creates liability for the Conservancy.

B. The purpose of the Endowment ("**Purpose**") is to create a permanent trust fund, the principal of which shall be preserved intact, to support and fund protection and enhancement of the ecological and natural conservation values on the publicly owned lands within the historic Irvine Ranch that have been dedicated for park or open space purposes ("**Irvine Ranch Public Wildlands**"). For the purpose of this Agreement, "**dedicated for park and open space purposes**" shall mean lands managed for the purpose of (1) protecting and enhancing native wildlife and habitat, and (2) passive recreational uses, such as hiking, biking and equestrian use.

C. The Irvine Ranch Public Wildlands include, but are not limited to, lands owned by County that are subject to Grant Deeds of Conservation Easements held by the Conservancy. The historic Irvine Ranch, including both the Irvine Ranch Public Wildlands and privately owned lands, is shown on the attached Exhibit A. The Purpose of the Endowment and permitted uses of the Endowment Income are described in greater detail in the attached Exhibit B ("**Program**").

3. TERM

The effective date of this Agreement is the date first above written and this Agreement shall expire upon the delivery of the final financial and programmatic reports, as described below, or as otherwise provided in this Agreement. The period between the effective date and expiration of the Agreement is referred to as the "**Term**" of the Agreement.

4. REPORTING

A. On or before April 15th of each year, the Foundation shall submit to the Conservancy an annual work plan and budget for the next Fiscal Year. For the purpose of this Agreement, a "**Fiscal Year**" is defined as the period between July 1st and June 30th. The work plan shall provide a brief narrative report of anticipated projects funded by the Endowment to be undertaken for the upcoming Fiscal Year within the Irvine Ranch Public Wildlands ("**Anticipated Projects**"). The budget shall include all Program-related direct costs and indirect costs. Direct costs shall include readily identifiable costs that can be directly attributed to the performance of the Program (for example, and without limitation, employee time spent on implementing the Program activities, consultant services contracted to perform Program activities, materials, supplies and equipment purchased for use on Program activities). Indirect costs shall include costs that benefit the Program as well as other programs and activities (for example, and without limitation, utilities, telephone service, office rent, accounting and legal services, general maintenance of office equipment, clerical support, expenses associated with administering and investing the Endowment, and miscellaneous office supplies). For purposes of this Agreement, the indirect costs shall be limited to no more than 25% of the total annual direct costs incurred in the performance of the Program. Within thirty (30) days after receiving the annual work plan and budget, the Conservancy shall provide the Foundation either (1) written

confirmation that the Anticipated Projects are consistent with the terms of this Agreement, or (2) written notice that some or all of the Anticipated Projects are not consistent with the terms of this Agreement, along with a written explanation of the inconsistency. In the event that the Conservancy does not respond within thirty (30) days, implementation of the annual work plan and budget may proceed (this implementation does not foreclose, however, later comments and corresponding revisions from the Conservancy on the annual work plan and budget).

B. On or before September 30th of each year, the Foundation shall submit annual financial and programmatic reports for the previous Fiscal Year. The financial and programmatic reports shall provide a summary of the Endowment Income spent in the preceding Fiscal Year, including a line item analysis comparing the budget to the actual expenditures, a summary of the Program activities that were funded with the Endowment Income, a description of the Endowment balance at the end of the preceding Fiscal Year, and a description of the Endowment Income earned during the preceding Fiscal Year. The annual financial and programmatic reports shall be submitted on Foundation letterhead and signed by the appropriate Foundation officer. The final financial and programmatic report will be due as and when required in Sections 17 or 18, below.

C. All reports shall be submitted to the Conservancy and the County at the addresses set forth in Section 22 below, or as those addresses may be modified pursuant to the terms of that section of this Agreement.

5. PAYMENTS

The County will make a single disbursement of the Two Million Dollars (\$2,000,000) Endowment, plus any accrued interest and income from the Endowment, to the Foundation within sixty (60) days following the effective date of this Agreement. Until such disbursement, the Endowment and any accrued interest and income from the Endowment shall be subject to the terms of the Original Agreement. Upon making such disbursement to the Foundation, the County shall have no further rights or obligations under this Agreement, and the County shall not be a party to any subsequent amendment to this Agreement.

6. EXPENDITURE LIMITED TO DESIGNATED PURPOSES

A. The Endowment Income may be spent only on the costs arising from and associated with the Program activities described in Exhibit B, and as contained in the annual work plan and budget approved by the Conservancy pursuant to Section 4(A) of this Agreement.

B. The Conservancy may monitor and evaluate the Program activities, which may include visits to the Foundation's offices by Conservancy personnel and agents, visits to sites where Program activities funded with the Endowment Income have occurred, discussions with the Foundation's personnel, and review of financial and other records and materials related to the Program activities financed by the Endowment Income in an effort to determine whether the Foundation's use of the Endowment Income is consistent with the terms of this Agreement.

7. NO FINANCIAL BENEFIT TO PRIVATE LANDOWNERS AND TIC

The Endowment Income may not be used to fund any Program activities on any portion of the historic Irvine Ranch that is not publicly owned and dedicated for park or open space purposes; provided, however that the Endowment Income may be used for Program activities on privately owned portions of the historic Irvine Ranch if, in the future, they become publicly owned lands that are dedicated for park or open space purposes. Such privately owned portions of the historic Irvine Ranch, once they become publicly owned lands dedicated for park or open space purposes, shall be part of the Irvine

Ranch Public Wildlands. The Foundation is prohibited from investing the Endowment, or using the Endowment Income, in a manner that relates to mitigation activities performed by TIC or otherwise provides a financial benefit to TIC, including without limitation, any financial benefit to any affiliate or subsidiary of TIC; any entity controlled by TIC; any partnership that has as a partner or member any TIC affiliate or subsidiary, or any entity controlled or created by TIC or any officers, board members, agents or employees of TIC; or any entity (whether a for-profit or non-profit) with a majority of board members that are officers, board members, agents or employees of TIC.

8. PROVIDING GRANTS TO OTHERS

The Foundation is prohibited from using the Endowment Income to make grants without the Conservancy's prior written permission, which may be provided pursuant to the Conservancy's approval of the annual work plan and budget pursuant to Section 4(A) of this Agreement.

9. DISCLOSING CONFLICTS OF INTEREST

The Foundation must disclose to the Conservancy any proposed investment of the Endowment or use of the Endowment Income for activities in which a Foundation director or employee, or an immediate family member of a Foundation director or employee, has a material financial interest, except where a benefit accrues to a director or employee, or immediate family member thereof, who is in the class of persons intended to be benefited by the Purpose of the Endowment. In the event that the Foundation decides to pursue such investment or expenditure, the Foundation may only do so subject to the Conservancy's prior written approval and compliance with applicable law.

10. PROCUREMENT

The Foundation will follow the County's Contract Policy Manual with regard to documentation of procurements and maintain that documentation in the Foundation's files.

11. RECORDS AND AUDITS

A. The Foundation shall maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Agreement to the extent that, and in such detail as, will properly reflect all costs and expenses attributed to the Program. These records shall be maintained for a period of three (3) years after the final financial and programmatic report is submitted to the Conservancy.

B. The Conservancy and its auditors (internal and external) will have continuing access to all records relating to the Endowment until three (3) years after the final financial and programmatic report for the Endowment has been submitted to the Conservancy, unless applicable law requires a longer retention period.

C. The Foundation shall be responsible for reimbursing for any disallowance of any expenditure related to Program activities, but only to the extent that such expenditure was not in accordance with this Agreement or was not approved by the Conservancy in the annual work plan and budget pursuant to Section 4(A) of this Agreement.

12. SEGREGATION OF COSTS

The Foundation will segregate the costs of the Program from other projects that it administers.

13. JUSTIFICATION OF SALARY EXPENSES

Employee time spent on implementing the Program is a direct cost, not an indirect cost. Accordingly, the Foundation must track employees' actual time funded by the Endowment Income in a time and effort reporting system.

14. INTELLECTUAL PROPERTY LICENSE

Title to any Materials developed with Endowment Income vests in the Foundation, with the Conservancy getting free irrevocable license to use, publish or distribute all such copyrighted, trademarked, patented Materials, or inventions, trade secrets or other intellectual property rights. The word "**Materials**" may include, but is not limited to reports, studies, photographs (and negatives), computer programs, drawings, writings or other similar works or documents, along with all supporting data and material, produced under this Agreement. The Foundation agrees to provide the Conservancy with copies of the Materials at no cost.

15. ASSIGNMENT

The Endowment may not be assigned by the Foundation, in whole or in part, without the prior written consent of the Conservancy. The Conservancy may assign its rights and delegate its obligations under this Agreement to a third party at the Conservancy's sole and absolute discretion.

16. NO AGENCY

No legal partnership or agency is established by this Agreement. No Party is authorized or empowered to act as an agent, employee or representative of another, nor transact business or incur obligations in the name of another Party or for the account of another Party. No Party shall be bound by any acts, representations, or conduct of another.

17. TERMINATION AND REMEDIES

A. If the County or the Foundation defaults in performance of their respective duties under this Agreement, whether for circumstances within or beyond the control of the County or the Foundation and upon sixty (60) days written notice to the applicable Party (during which time that Party may cure such default with no penalty), the Conservancy may terminate this Agreement by written notice to the County and the Foundation. Sixty (60) days after receipt of the termination notice from the Conservancy, the Foundation shall take all necessary action to cancel outstanding commitments relating to the Program. The Foundation may use Endowment Income to pay any outstanding expenses permitted under this Agreement that could not reasonably be canceled. Within 90-days of the receipt of the termination notice, the Foundation shall return the balance of the Endowment and any unspent Endowment Income to the Conservancy with a final financial and programmatic report.

B. If the County or the Foundation defaults in performance of their respective duties under this Agreement and upon sixty (60) days written notice to the applicable Party (during which time that Party may cure such default with no penalty), the Conservancy has the right to specific performance and injunctive or other equitable relief of its rights under this Agreement, in addition to all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative.

18. CHANGED CONDITIONS

If the portion of the Irvine Ranch Public Wildlands owned by the County in fee title is ever composed of less than ten thousand (10,000) acres, the Purpose shall be deemed obsolete, the Conservancy may immediately terminate this Agreement by written notice to the County and the Foundation. Within

90-days of the receipt of the termination notice, the Foundation shall return the balance of the Endowment and any unspent Endowment Income to the Conservancy with a final financial and programmatic report.

19. LOBBYING, POLITICAL CAMPAIGNING, AND PRIVATE INUREMENT

A. The Foundation shall not use or provide Endowment Income to fund any lobbying activities.

B. The Foundation shall not use or provide Endowment Income to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

20. LIABILITY

The Foundation shall be solely responsible for the payment of all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of the Program. The Foundation agrees to indemnify and hold the Conservancy and the County harmless from all claims, loss, damages, costs and expenses, including attorney fees through the appellate levels, made against or incurred by the Conservancy or the County arising out of this Agreement, work performed by the Foundation under this Agreement, or work funded by Endowment Income, or arising out of any act or omission of the Foundation, its employees or agents, including, without limitation, any act or omission related to or arising from the promulgation of an alternative investment policy or the implementation or compliance with the County's investment policy or any alternative investment policy.

21. INSURANCE

The Foundation shall, at the Foundation's own cost and expense, secure and maintain during the entire Term, a broad form comprehensive coverage policy of liability insurance and insuring the Foundation and the Conservancy (including its employees and agents) against any loss or liability caused by or connected with the Foundation's occupation and use of the Endowment under this Agreement, including personal and bodily injury and property damage in an amount not less than Two Million Dollars (\$2,000,000.00) of combined single limit liability coverage per occurrence, accident or incident. Certificates of such insurance shall be provided to the Conservancy, and the Conservancy shall be notified at least thirty (30) days prior to any material change to the required policy. All policies shall include coverage for all claims filed after expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination.

22. NOTICE.

All notices required under this Agreement shall be given either (i) in person, (ii) by nationally recognized overnight delivery service, or (iii) by facsimile delivery which is confirmed by first class certified or registered United States mail, with return receipt requested to the address and/or fax number for the party set forth in this Section 7. Notice sent by United States mail shall be deemed given effective the second (2nd) business day after deposit with the United States Postal Service. Notice by personal service or nationally recognized overnight delivery service shall be effective upon delivery or attempted delivery. Either party may change its address for receipt of notices by notifying the other party in writing.

To Conservancy: The Nature Conservancy
Attn: Grants Specialist - SCDR
601 South Figueroa Street
Suite 1425
Los Angeles, CA 90017

To Foundation: _____

Attention: _____

To County: County of Orange
OC Parks
13042 Old Myford Rd.
Irvine, CA 92602
Attn: Director

23. USE OF CONSERVANCY OR COUNTY NAME/LOGO

The Foundation may not use the Conservancy or County's name and/or logo in any way without prior written consent from the Conservancy or the County, as applicable.

24. TAXES

The Foundation agrees to be responsible for filing and payment of all applicable taxes and for compliance with all provisions and requirements arising under any applicable tax laws. Neither federal, nor state, nor local income tax, nor payroll tax of any kind shall be withheld or paid by the Conservancy on behalf of the Foundation, or employees of the Foundation. If appropriate, the Conservancy shall report all fees paid to the Foundation to the IRS on Form 1099.

25. COMPLIANCE WITH LAWS

The Foundation represents, warrants, and agrees that, in connection with the Program, the Foundation shall comply with all applicable statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the State of California, and any other jurisdiction(s) in which the Foundation is organized or authorized to do business, including but not limited to (1) any anti-bribery statutes that are applicable to the work to be done by the Foundation under this Agreement; (2) the Supervision of Trustees and Fundraisers for Charitable Purposes Act (California Government Code section 12580 *et seq.*), and (3) all obligations for charities and trustees contained in the Probate Code and California Code of Regulations, including title 11, sections 300 to 312.1 and 999.1 to 999.2 (in each case, an "**Applicable Law**"). The Foundation shall not take any actions that might cause the Conservancy to be in violation of any such Applicable Law.

26. CHOICE OF LAW/FORUM

This Agreement shall be interpreted, construed and governed by the laws of the State of California and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Agreement, the Parties agree that litigation shall be conducted in the State of California.

27. BINDING EFFECT/AMENDMENTS

This Agreement supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Agreement between the Parties relating to the work set out above. No amendment shall be effective except in writing signed by all relevant Parties.

28. SEVERABILITY

If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and have duly authorized and caused this Agreement to be executed as of the date first above written.

Conservancy

The Nature Conservancy, a District of Columbia non-profit corporation

By: _____
Mike Sweeney, State Director

Date: _____

APPROVED AS TO FORM
COUNTY COUNSEL

By: Thomas A. Wilk

Date: 1/15/13

County

County of Orange

By: _____
Chair, Board of Supervisors

Date: _____

Foundation

The Orange County Parks Foundation

By: _____

Date: _____

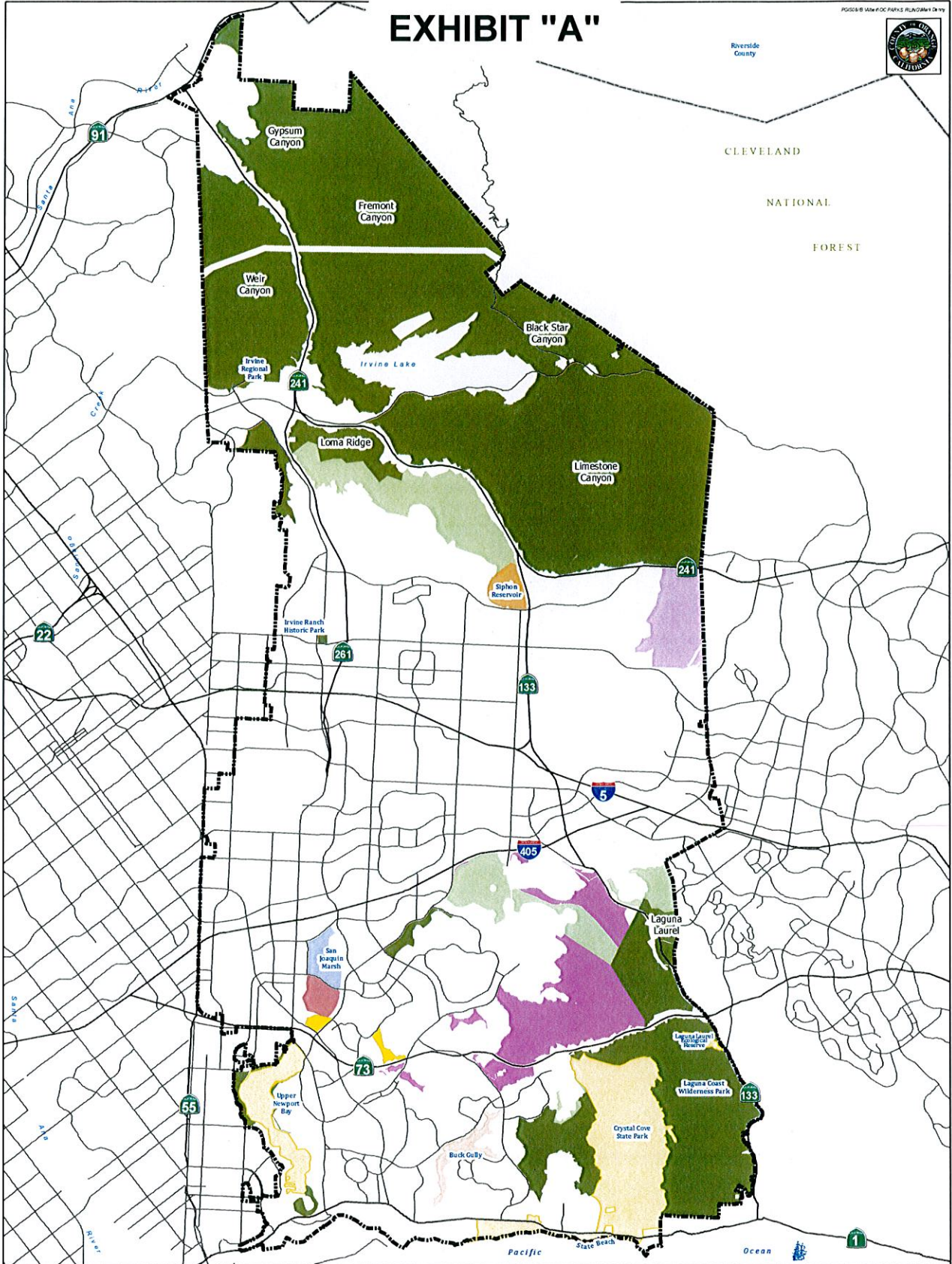
EXHIBIT A

MAP OF THE HISTORIC IRVINE RANCH

EXHIBIT "A"

PG028-0 Map # OC PARKS PLUNCAM4.Dwg

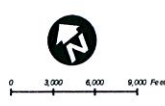
Riverside County



DESIGNED AND PRODUCED BY:
 OC Parks
 25
 2010

DATA SOURCE:
 Geometric Land Information System, Division
 of Planning and Information Systems
 The County of Orange and the City of Newport Beach
 are not responsible for any errors or omissions in the
 data from which this map was derived. Neither the County of Orange
 nor the City of Newport Beach shall be liable for any damages, direct
 or indirect, special, incidental or consequential, arising from
 the use of this map.

DATE: June 02, 2010



- Irvine Ranch Public Wildlands**
- County of Orange
 - State of California
 - City of Irvine
 - TIC IOD To City of Irvine
 - City of Newport Beach
 - IRWD
 - TCA
 - UC Natural Reserve System
 - UCI
 - Department of Navy
 - Historic Irvine Ranch Boundary

Ownership of Protected Parks and Open Space



EXHIBIT B

PROGRAM

1. The Endowment shall be held and the Endowment Income used by the Foundation, in accordance with applicable sections of the County's Contract Policy Manual, provided that Foundation may use the Endowment Income exclusively to pay for the indirect costs described in Section 4 of the Agreement and the reasonable direct costs that actually arise from performance of the following work on the Irvine Ranch Public Wildlands.

The protection and enhancement of the Irvine Ranch Public Wildlands' ecological and natural Conservation Values (as defined below). Such protection and enhancement may include management, maintenance, restoration/enhancement, research, monitoring or analysis of the Conservation Values. The Foundation's protection and enhancement of the Conservation Values may include, but is not necessarily limited to, the following activities: removal and control of invasive plant and animal species, restoration of degraded natural communities, study of native plant or wildlife species, installation of barricades to prevent unauthorized access, and provision of staff for site security to protect the Conservation Values.

2. On properties subject to Grant Deeds of Conservation Easements held by the Conservancy (or its successors), Endowment Income may be used exclusively for Program activities performed in compliance with such Grant Deeds of Conservation Easements.
3. On properties subject to the Orange County Central Coastal Natural Communities Conservation Plan ("**OC NCCP**"), Endowment Income may be used for Program activities that are consistent with the established plans, programs and policies of the OC NCCP.
4. The "**Conservation Values**" of the Irvine Ranch Public Wildlands shall mean the riparian, coastal sage scrub, native grassland, oak woodland, riparian forests, chaparral, Tecate cypress forest, rock outcrop and aquatic communities of the Irvine Ranch Public Wildlands. The Conservation Values include the many sensitive, rare and endangered plant and animal species dependent on these natural communities, including but not limited to, intermediate mariposa lily, Catalina mariposa lily, many-stemmed dudleya, Humboldt lily, Heart-leaved pitcher sage, chaparral beargrass, Palmer's grappling hook, mule deer, mountain lion, bobcat, coyote, American badger, various species of bats, black-chinned sparrow, Bell's sage sparrow, California gnatcatcher, Cactus wren, San Diego fairy shrimp, San Diego mountain kingsnake, red diamond rattlesnake, speckled rattlesnake, Southwestern spadefoot toad and Coast horned lizard.