

September 28, 2009

Orange County Board of Supervisors
Pat Bates, Chairman
333 W. Santa Ana Blvd.
Santa Ana, CA 92701

Subject: Open Space Lands Transaction - proposed Letter of Intent

Dear Supervisor Bates and Members of the Board:

We are writing to share our collective concerns about the proposed land transfer of 20,000 acres from The Irvine Company to the County. Though we applaud the idea of adding to the regional park system, this significant increase in public open space must be fully evaluated. We want to ensure the County is in the best negotiating position possible. Since the sudden news of this land transfer to the County, we've gathered as much information as we can and discussed it among the many long-standing and knowledgeable people and groups interested in protecting the public interest now and in the future.

We've watched the ups and downs and changes having to do with the Orange County Regional Park System over many years, especially since the 1994 bankruptcy, and can't help but be concerned about its future and that of the new public lands. We hope to add value to this process by outlining four significant concerns that the undersigned organizations and individual have, related to the proposed Letter of Intent (LOI) and details of the land transfer.

First, we are concerned about continued habitat protection of the land. As we are sure you are aware, 11,550 acres of the existing Irvine Ranch open space is protected by conservation easements monitored by The Nature Conservancy (TNC). TNC agreed to monitor these lands and ensure easement compliance by the fee owner *in perpetuity*. These easements offer a higher level of protection for the land than deed restrictions. A deed restriction can only be enforced by the grantor, as opposed to independent enforcement guaranteed through an easement. We oppose the proposed conversion of conservation easements to deed restrictions mainly for this reason. The County could ensure more protections on the land by adding deed restrictions to the title when the transfer occurs, to ensure the Park Abandonment Act is applicable.

Second, based on our analysis and understanding of the LOI as a somewhat binding document, we feel it inadequately addresses the financial responsibility and needs of the County/OC Parks. We believe there needs to be a more significant funding source identified. Our experience with almost every conservation transaction in recent years leads us to believe that a permanent non-wasting endowment would be the only solution to adequately protect the County/OC Parks. This endowment would ensure that the County can accept these lands while fully meeting the management requirements and protecting the entire park system. Identifying the \$4.6 million solely as management funds from The Nature Conservancy for the entire property raises several issues.

- The County *assumes* TNC will convert the easements to deed restrictions and relinquish the funds established for monitoring and enforcing the easements.
- If TNC does not comply with these deal points within the LOI, it becomes a poison pill for continued negotiations.

- The State Lands Commission, Department of Fish and Game, Department of Parks and Recreation, and the UC Reserve System, all require a management endowment when accepting additional lands. Even the Orange County Transportation Authority with its Renewed Measure M Environmental Mitigation Program is required to provide management funds. The County needs to receive funds that will ensure appropriate management of the land *in perpetuity*.
- OC Parks participated in the Orange County Report Card for the Parks, Recreation and Environment Committee. Each OC Park Manager determined their particular Parks' capital needs for the next five years to be a combined total of \$31.1 million. Taking on an additional 20,000 acres will certainly have financial impacts – yet a line item budget of costs has not been released. We do not want other county parks and facilities to suffer at the expense of this new parkland.

Third, it seems the County does not intend to ever manage the new land, yet they will have all of the liabilities related to public access, encroachment, arson, etc. How will the County pay for additional management with no additional resources? We are under the impression that the contract with the Irvine Ranch Conservancy (IRC) ensures the existing public outreach and access programs, and existing management would continue uninterrupted. According to the Letter of Intent, the IRC land management fees will cost \$1.5 million per year. In the likely scenario that the one year contract gets extended to three years, with a management fee of \$1.5 million per year, this means the assumed TNC funds (\$4.6 million) will be almost entirely used up in the first three years. Then what? At a meeting with OC Parks Director Mark Denny on September 17, 2009, he stated that once the three years were up, a Request for Proposals would go out for the management of the land. Why isn't the County interested in managing the land? At the very least a five year line item budget must be prepared and evaluated before entering into a legally challengeable Letter of Intent.

Finally, this land transfer has the potential to be a wonderful opportunity for the County. The County must think strategically. As stated before, we want the County in the best negotiating position possible. The County and taxpayers would be best served with more information, more expertise and more protections for the County (ultimately the taxpayers). For instance, one glaring omission in the Letter of Intent is the absence of protections for the County if it changes its mind and does not want to consummate the deal. Without this clause protecting it from *promissory estoppel*, the County risks being sued and being required to perform on the deal if The Irvine Company relies on the LOI to its detriment. Many of the organizations and individuals signed on to this letter have been involved in open space and park issues for decades, including the OC Strategic Plan Stakeholders Advisory Committee and the Natural Community Conservation Plan. We are also offering our expertise in this negotiation. The County would be in a much stronger position if it hired professional negotiators for such a complicated and complex conservation transaction. The fate of the land and our County's pocketbooks hang in the balance.

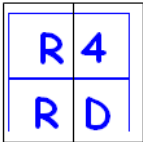
Thank you for your continuing consideration of our concerns.

Signed by the following organizations

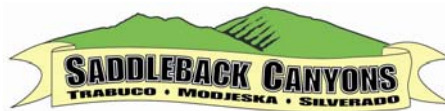




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Residents for
Responsible
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and individuals:

- Gus Ayer, Community Leader
- Denny Bean, Conservation and Trail Advocate
- Ilse Byrnes, Member of the California Trails and Greenway Foundation
- Penny Elia, Community Leader
- Marni Magda, Community Leader
- Stephanie Pacheco, Community Leader
- Theresa Sears, Community Leader