

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (Agreement) is hereby made as of March 30, 2006 by and between the Santa Monica Mountains Conservancy, an agency of the State of California (SMMC) and the Mountains Recreation and Conservation Authority, a California Joint Powers Authority (MRCA). The SMMC and MRCA are collectively referred to herein as the Parties. The Parties enter into this Agreement in order to resolve *Mountains Recreation and Conservation Authority v. Santa Monica Mountains Conservancy*, Los Angeles Superior Court Case No. BC 340177 (the litigation).

### RECITALS

1. SMMC is the grantor of state bond funds for various projects under several bond acts, including the following (“the bond acts”):
  - a. The Safe Neighborhoods, Clean Water, Clean Air and Coastal Protection Bond Act of 2000 (Prop. 12);
  - b. The Safe Drinking Water, Clean Water, Watershed and Flood Protection Bond Act (Prop. 13);
  - c. The California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002 (Prop. 40).
2. In its 2002-03 fiscal year, the SMMC granted funds under the bond acts to the MRCA pursuant to written grant agreements for specific projects that the SMMC and MRCA reasonably believed were consistent with the purposes and intent of the bond acts.
3. MRCA fully performed its obligations under the written grant agreements.
4. On May 4, 2004 the State Office of Audits and Evaluations in the California

Department of Finance (Finance) issued a management letter detailing the results of an audit Finance performed regarding SMMC's management of the bond acts funds during the fiscal year ending June 30, 2003. In its management letter, Finance alleged that SMMC had made certain grants to MRCA for purposes that were inconsistent with certain specific provisions of the bond acts. In the management letter, Finance did not assert that MRCA had failed to perform its obligations under the written grant agreements, nor did it assert that any of the funds granted had been expended for purposes that were not included in the grant agreements. The SMMC and the MRCA, by and through their respective Chairs, legal counsel and consultants sent detailed responses to Finance that Finance did not accept.

5. Thereafter, in the Budget Act of 2004, the Legislature conditioned the appropriation to the SMMC in part as follows:

- a. The SMMC was to seek refunds from the MRCA of unencumbered bond funds which the SMMC had advanced to the MRCA; and
- b. The SMMC was to follow the advice of the Attorney General with respect to refund of \$491,861 in overhead on the grant for the acquisition of the Avatar property.

6. Pursuant to *Stevens v. Geduldig* (1986) 42 Cal.3d 24, the Attorney General has advised the SMMC that it has a potential cause of action to recover from MRCA the sum of \$1,771,134, comprised of grant funds that the SMMC now contends were granted for projects inconsistent with certain provisions of the bond acts or were overhead chargeable to only one of the two bond funds used to acquire the Avatar property.

7. On December 4, 2004, at the direction of the SMMC, the Attorney General made

written demand on MRCA for the return of the following grant funds in cash or equivalent:

- a. Grant SMM-6109 in the amount of \$76,293 (Prop. 40 Friends of the Conservancy grant);
- b. Grant SMM-871 in the amount of \$768,000 (Prop. 12 Education and Interpretation grant);
- c. Grant SMM-895 in the amount of \$429,000 (Prop. 12 Education and Interpretation grant); and
- d. The overhead for the Avatar project (grant SMM-882) which the Attorney General had concluded that the MRCA improperly had charged to Prop. 12 in the amount of \$491,841.

8. In 2005, Finance conducted another audit of the SMMC's use of bond funds and raised concerns about several additional Proposition 40 grants. The SMMC referred those grants to the Attorney General for his review. In a December 21, 2005 letter to the SMMC, the Attorney General concluded that grant SMM-03123 for \$217,980 for financial support of a shuttle bus project was not appropriate under Proposition 40. The Attorney General also concluded that grant NP-02171 for \$132,000 to the MRCA to contract with the California Institute of Public Affairs (CIPA) to develop an urban outreach strategy also was not a proper use of Proposition 40 funds. Although the SMMC has not made a formal demand on the MRCA for refund of these monies, the Parties wish to resolve here any claims that may exist regarding these monies and thus include grants SMM-03123 and NP-02171 in the SMMC Demand Amount. Therefore the total Demand Amount is \$2,115,114 (Demand Amount).

9. The MRCA disputes the SMMC's claims and believes that it has valid defenses to

any and all claims that the SMMC is making. Specifically, the MRCA disputes that the education and interpretation programs designed to increase access to parks must result in the acquisition, improvement or restoration of a park in order to the programs to be consistent with Prop. 12. The MRCA also disputes that it cannot charge to one of the two bond funds used to acquire the Avatar property all of the overhead which the MRCA's cost allocation plan required that the MRCA charge for the project. As to the grants described in paragraph 8, the MRCA disputes that the purposes of those grants were not proper under Proposition 40.

10. MRCA has fully expended the funds the SMMC granted to it under the foregoing grants for the projects specified in the grant agreements and for purposes consistent with the grant agreements. MRCA has no independent and unencumbered stream of non-bond revenue sufficient to meet the cash demand from SMMC. If a court ordered the MRCA to satisfy the SMMC's cash demand, in whole or in part, in order to raise those funds, the MRCA could be required to sell property that it now holds and that is now protected as parklands or open space.

11. MRCA owns certain parcels of real property as unencumbered assets, including, without limitation, 2650 acre property described in Exhibit A ("real property") which is located adjacent to property that the SMMC currently owns. The MRCA has appraised the real property as having a value in excess of \$6 million, and the Department of General Services has approved that appraisal. The real property is located in the Santa Monica Mountains Zone, contains valuable natural resources including diverse habitats and endangered species, and it encompasses portions of the Santa Monica Bay watershed. Therefore, this property would be eligible for acquisition using Proposition 12, 13 or 40 bond funds. The MRCA did not use bond funds to acquire this property. While the value of the real property greatly exceeds the Demand Amount,

the MRCA does not possess a mechanism by which it could transfer only a portion of the property. Transfer of the real property from the MRCA to the SMMC pursuant to this Agreement will be in the public interest because the SMMC, as a conservation agency owning adjacent land, will retain the real property for park and open space purposes.

12. On September 21, 2005, the MRCA filed a declaratory relief action captioned *Mountains Recreation and Conservation Authority v. Santa Monica Mountains Conservancy*, Los Angeles Superior Court Case No. BC 340177. In that action, the MRCA seeks a declaration that the SMMC properly made grants SMM-6109, SMM-871, SMM-895 and SMM-882 (Avatar), that the MRCA properly expended the funds awarded in grants SMM-6109, SMM-871, SMM-895 and SMM-882 (Avatar), and that the MRCA is not legally obligated to refund to the SMMC the amounts granted in grants SMM-6109, SMM-871, SMM-895 and SMM-882 (Avatar). The MRCA has amended its complaint to seek the same declarations regarding grants NP-02171 and SMM-03123.

13. There currently exists a dispute between the Parties as to the demands that SMMC has made. Without admitting any wrongdoing, intentional or inadvertent, by either party, the Parties intend this Agreement to be a full and conclusive settlement of any and a issues regarding grants SMM-6109, SMM-871, SMM-895, Avatar overhead (grant SMM-882), NP-02171 and SMM-03123, and any and all issues raised in Finance's May 4, 2004 management letter that were or could have been raised in the demand.

14. The Parties intend this Agreement to resolve the dispute between the Parties and thereby resolve the litigation.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and

covenants hereinafter set forth, it is hereby agreed by and among the Parties hereto that as of the date this Agreement shall have been executed by all of the Parties hereto, all claims, demands, contentions, allegations and potential causes of action regarding grants SMM-6109, SMM-871, SMM-895, SMM-882 (Avatar), SMM-03123 and NP-02171 are to be compromised and settled on the terms set forth herein without any admission of liability or concession by any of the Parties that the contentions of any of the other Parties is correct.

#### **TERMS OF COMPROMISE**

A. Within twenty-one (21) calendar days of the last date of the full execution of this Agreement, MRCA shall cause to be forwarded to the Attorney General a formal and irrevocable offer to dedicate to SMMC fee title to approximately 2650 acres of real property owned in fee by MRCA within the Santa Monica Mountains Zone and more specifically described in Exhibit A, attached hereto and incorporated herein by this reference (“the Property”).

B. The Parties hereby agree that the Property that the MRCA is offering to dedicate to the SMMC is worth at least the equivalent of the Demand Amounts. The Parties acknowledge that the MRCA did not expend SMMC bond funds in acquiring the Property.

C. MRCA’s offer to dedicate the Property to SMMC shall constitute full and complete satisfaction of SMMC’s claim for the Demand Amount and for any other claim that the SMMC could make on the MRCA pursuant to the May 4, 2004 Finance management letter or arising from the above-described grants or the Avatar overhead.

D. Upon receipt of MRCA’s offer to dedicate the Property, Attorney General shall issue to the MRCA a complete written release and satisfaction of SMMC’s demand for the Demand Amount in a form satisfactory to the law firm of Richards, Watson & Gershon, the

MRCA's outside legal counsel. Within thirty (30) days after the Attorney General issues the release to the MRCA, the Parties, through their respective counsel, shall submit a stipulated judgment to the Court for its execution. The stipulated judgment shall be in the form of the proposed stipulated judgment attached hereto as Exhibit B.

E. The timing, conditions and circumstances of SMMC's acceptance of the dedication and of title to the Property shall be in the sole discretion and at the sole cost of SMMC. MRCA shall use its best efforts to cooperate with SMMC and its staff, consultants, officers and experts in facilitating SMMC's acceptance of the dedication and acquiring title to the Property.

F. The MRCA shall impose no conditions on the SMMC's acquisition of the Property, except that any use of the Property shall be consistent with the Santa Monica Mountains Conservancy Act as it exists on the date the MRCA makes the offer to dedicate. The SMMC shall take title to the Property subject to any conditions restricting the use of the property to park or open space that the grantor of the Property imposed on the MRCA.

G. This Agreement shall serve as a full release and discharge by SMMC on behalf of itself, the members and represented entities of SMMC, the State of California, and SMMC's Governing Board Members, officers, agents, representatives, assigns, employees, administrators, trustees, insurers, attorneys, heirs, beneficiaries, and successors in interest, in consideration of the mutual covenants and promises contained herein, of MRCA, the members MRCA, and MRCA's Governing Board, officers, agents, representatives, assigns, employees, administrators, trustees, insurers, attorneys, heirs, beneficiaries, and successors in interest, from all demands, claims or cross-claims and from all causes of action, including those for damages, refunds,

compensation, attorneys' and experts' fees and costs, accrued interest, injunctive or declaratory relief, or for relief by way of writ of mandate, or for demands, damages, refunds, debts, liabilities, reckonings, accounts, obligations, costs, expenses, liens, actions, causes, and causes of action of whatever kind, at law or in equity, which arise from and/or are related to SMMC's demands and the Demand Amount.

H. This Agreement shall serve as a full release and discharge by MRCA on behalf of itself, the members of MRCA, and MRCA's Governing Board, officers, agents, representatives, assigns, employees, administrators, trustees, heirs, beneficiaries, and successors in interest, in consideration of the mutual covenants and promises contained herein, of SMMC, the member and represented agencies of SMMC, the State of California and SMMC's Governing Board members, officers, agents, representatives, assigns, employees, administrators, trustees, insurers, attorneys, heirs, beneficiaries, and successors in interest, from all claims or cross-claims and from all causes of action, including those for damages, compensation, attorneys' and experts' fees and costs, injunctive or declaratory relief, or for relief by way of writ of mandate, or for demands, damages, refunds, debts, liabilities, reckonings, accounts, obligations, costs, expenses, liens, actions, causes, and causes of action of whatever kind, at law or in equity, which arise from and/or are related to SMMC's demands and the Demand Amount.

I. Each of the Parties acknowledges that this Agreement relates to the settlement of disputed claims and of the litigation. The Parties, therefore, agree that this Agreement is not to be construed as an admission of liability by either of the Parties to the Agreement.

J. The Parties hereby expressly waive the provisions of Section 1542 of the California Civil Code, which provide:



"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

**The waiver of Civil Code § 1542 shall only apply to the scope of the releases described in this Agreement.**

K. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty and ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California.

L. If any action is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which that party may be entitled. This provision shall be construed as applicable to this entire Agreement.

M. The Parties, and each of them, acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by counsel. The MRCA has been represented by Richards, Watson and Gershon, and the SMMC has been represented by the Office of the Attorney General. The parties executed the Agreement after review by their respective counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of the party not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters which are the subject of this Agreement.

N. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other agreements, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No representative of any of the Parties hereto had or has any authority to make any representation or promise not reflected or contained in this Agreement, and each of the Parties acknowledges that he, she or it has not executed this Agreement upon any such promise. This Agreement cannot be modified or changed except by written instrument signed by all the Parties.

O. If any portion, provision, or part of this Agreement is held, determined or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement, and shall not affect the validity or enforceability of such remaining portions, provisions or parts.

P. Each of the Parties agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the terms and conditions of this Agreement.

Q. On January 23, 2006, the SMMC met in closed session to consider this Agreement. At that time, the SMMC approved this Agreement and authorized its chair to execute this Agreement on behalf of the SMMC.

R. On January 27, 2006, the MRCA met in closed session to consider this Agreement. At that time, the MRCA approved this Agreement and authorized its chair to execute this Agreement on behalf of the MRCA.

S. This Agreement may be executed in counterparts, each of which shall be deemed

to be an original and all of which together shall be deemed to constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the latest of the dates set forth below.

SANTA MONICA MOUNTAINS CONSERVANCY

DATED: March 27<sup>th</sup>, 2006



By: Elizabeth A. Cheadle, Chairperson

MOUNTAINS RECREATION AND CONSERVATION AUTHORITY

DATED: March 30, 2006



By: Michael Berger, Chairperson


APPROVED AS TO FORM:

BILL LOCKYER, Attorney General  
J. MATTHEW RODRIQUEZ,  
Senior Assistant Attorney General  
JOHN A. SAURENMAN,  
Supervising Deputy Attorney General

By:   
JOHN A. SAURENMAN

Attorneys for the Santa Monica Mountains Conservancy

RICHARDS, WATSON & GERSHON  
A Professional Corporation

By:   
MITCHELL ABBOTT

Counsel for the Mountains Recreation and Conservation Authority

**Exhibit "A"**

# EXHIBIT "1"

## LEGAL DESCRIPTION

### AHMANSON RANCH OPEN SPACE

That portion of Tract "P" of the Rancho Simi, in the County of Ventura, State of California, as per map recorded in Book 3 Page 7, of Maps, in the Office of the County Recorder of said County, lying easterly of a line described as follows:

Beginning at a 1/2 inch iron pipe in the southerly boundary of said Tract "P", Rancho Simi, set by C.A. Ensign in 1915 (see L. S. 8-33, Records of Los Angeles County), and as shown on Los Angeles County Surveyor's Map B-711, Sheet No. 1, Station 219 plus 35.06; thence,

North 15° 49' 40" West 281.60 feet; thence,

North 5° 43' 50" East 496.00 feet to a 2 inch iron pipe; thence,

North 3° 39' 50" East 338.80 feet; thence,

North 21° 47' 10" East 1349.00 feet; thence,

North 25° 29' 30" West 1030.40 feet to a 2 inch iron pipe; thence,

North 10° 38' 30" West 1146.00 feet; thence,

North 51° 44' 40" West 955.40 feet to a 2 inch iron pipe; thence,

North 10° 20' 00" East 759.50 feet; thence,

North 5° 56' 10" West 1094.40 feet to a 2 inch iron pipe; thence,

North 34° 49' 00" East 217.30 feet; thence,

North 4° 00' 20" West 593.70 feet; thence,

North 29° 36' 20" West 621.00 feet; thence,

North 36° 26' 40" East 200.70 feet to a 2 inch iron pipe; thence,

North 5° 19' 10" West 705.40 feet; thence,

North 85° 53' 10" West 495.90 feet; thence,

North 28° 32' 10" West 1153.70 feet to a 2 inch iron pipe; thence,

North 77° 30' 10" West 347.40 feet to a 2 inch iron pipe; thence,

North 27° 12' 30" West 5060.00 feet; thence,

North 72° 32' 40" West 3100.00 feet; thence,

North 55° 03' 50" West 3103.70 feet, more or less to the northerly line of said Tract "P" of Rancho Simi, said point being North 73° 43' 55" East a distance of 9929.87 feet, more or less, from the northwest corner of said Tract "P" of Rancho Simi, said corner being also Station 6 of Patent Boundary of said Rancho.

**EXCEPTING** therefrom that portion thereof described in deed from Edward Kipling and Lois Ada Kipling to Homer H. Cockrum, recorded March 5, 1946, in Book 741, Page 279, Official Records of Ventura County, California.

**ALSO EXCEPTING** therefrom that portion of land lying easterly of a line described as follows:

Commencing at aforementioned Point of Beginning described above as a 1/2 inch iron pipe in the southerly boundary of said Tract "P", Rancho Simi, set by C.A. Ensign in 1915 (see L. S. 8-33, Records of Los Angeles County), and as shown on Los Angeles County Surveyor's Map B-711, Sheet No. 1, Station 219 plus 35.06; thence, along said southerly boundary line North 85° 14' 40" East 1335.37 feet to an angle point described as Station 232 plus 70.43 as shown on said Los Angeles County Surveyor's Map B-711, Sheet No. 1, said bearing being the basis of bearings for this Legal Description; thence, continuing easterly along said southerly boundary South 89° 56' 30" East 2012.26 feet to the **True Point of Beginning**; thence,

Northerly leaving said southerly boundary line North 4° 40' 04" West 689.49 feet; thence,

North 72° 15' 16" East 867.40 feet; thence,

North 5° 50' 52" East 399.59 feet; thence,

North 67° 44' 54" West 363.72 feet; thence,

North 13° 15' 54" West 217.84 feet; thence,

North 46° 17' 22" West 227.95 feet; thence,

North 7° 36' 09" West 304.18 feet; thence,

North 56° 19' 52" West 281.66 feet; thence,

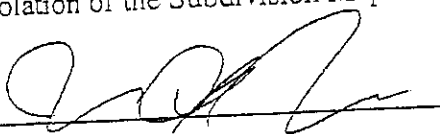
North 33° 19' 52" West 715.40 feet; thence,

North 18° 08' 36" West 386.56 feet; thence,  
North 76° 37' 10" West 212.88 feet; thence,  
North 18° 30' 31" West 480.15 feet; thence,  
North 23° 44' 14" East 268.36 feet; thence,  
North 4° 17' 24" West 271.17 feet; thence,  
North 26° 14' 29" West 398.35 feet; thence,  
North 2° 44' 35" East 253.32 feet; thence,  
North 35° 01' 23" West 179.35 feet; thence,  
North 12° 19' 28" East 445.37 feet; thence,  
North 44° 28' 58" East 235.31 feet; thence,  
North 17° 52' 48" West 416.78 feet; thence,  
North 56° 27' 18" East 1035.80 feet; thence,  
North 0° 36' 14" East 780.19 feet; thence,  
North 37° 04' 18" East 857.73 feet; thence,  
North 9° 29' 13" East 1024.01 feet; thence,  
North 15° 49' 44" East 508.00 feet to the westerly terminus of that line described as  
South 70° 17' 50" West 841.98 feet in said deed described above from Edward Kipling and  
Lois Ada Kipling to Homer H. Cockrum, recorded March 5, 1946, in Book 741, Page 279,  
Official Records of Ventura County, California.

Containing 2650 acres of land more or less.

The above referenced parcel of land is delineated on the accompanying sketch hereby made a  
part for reference purposes only.

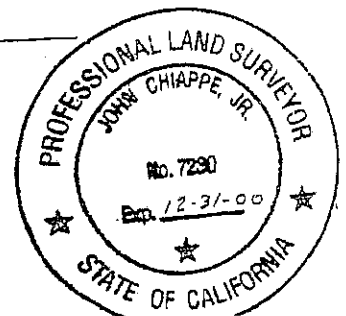
This legal description is not intended for use in the division and/or conveyance of land in  
violation of the Subdivision Map Act of the State of California.



John Chiappe Jr., PLS 7230

Psomas and Associates

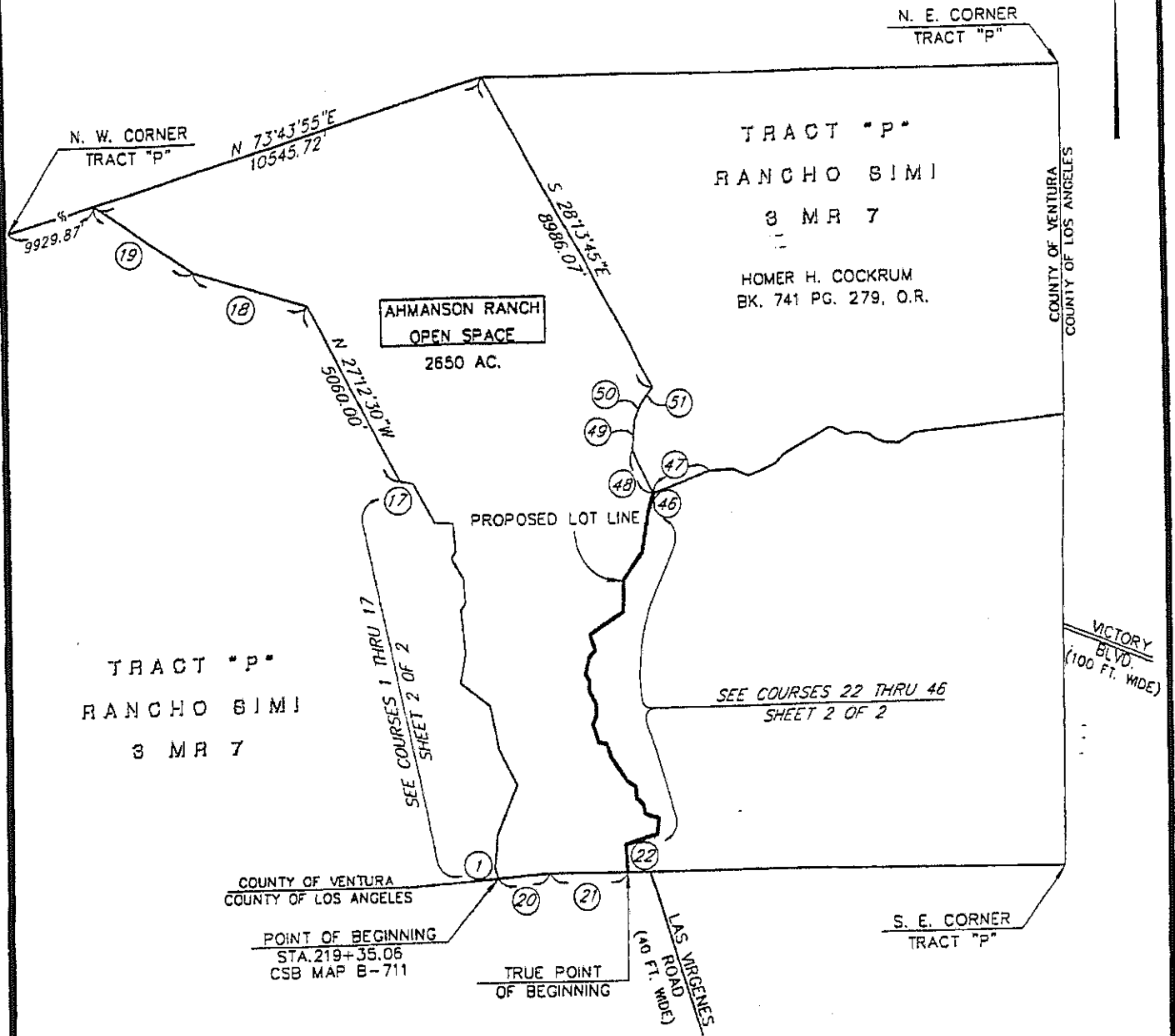
9-1-98  
Date





# EXHIBIT "1"

## AHMANSON RANCH OPEN SPACE



**GRAPHIC SCALE**  
 1" = 4000'  
 SHEET 1 OF 2

# EXHIBIT "1"

## AHMANSON RANCH OPEN SPACE

DATA TABLE

BEARING	LENGTH
① N 15°49'40"W	281.60'
② N 5°43'50"E	496.00'
③ N 3°39'50"E	338.80'
④ N 21°47'10"E	1349.00'
⑤ N 25°29'30"W	1030.40'
⑥ N 10°38'30"W	1146.00'
⑦ N 51°44'40"W	955.40'
⑧ N 10°20'00"E	759.50'
⑨ N 5°58'10"W	1094.40'
⑩ N 34°49'00"E	217.30'
⑪ N 4°00'20"W	593.70'
⑫ N 29°36'20"W	621.00'
⑬ N 36°26'40"E	200.70'
⑭ N 5°19'10"W	705.40'
⑮ N 85°53'10"W	495.90'
⑯ N 28°32'10"W	1153.70'
⑰ N 77°30'10"W	347.40'
⑱ N 72°32'40"W	3100.00'
⑲ N 55°03'50"W	3103.70'
⑳ N 85°14'40"E	1335.37'
㉑ S 89°56'30"E	2012.26'
㉒ N 4°40'04"W	689.49'
㉓ N 72°15'16"E	867.40'
㉔ N 5°50'52"E	399.59'
㉕ N 67°44'54"W	363.72'

DATA TABLE

BEARING	LENGTH
㉖ N 13°15'54"W	217.84'
㉗ N 46°17'22"W	227.95'
㉘ N 7°36'09"W	304.18'
㉙ N 56°19'52"W	281.66'
㉚ N 33°19'52"W	715.40'
㉛ N 18°08'36"W	386.56'
㉜ N 76°37'10"W	212.88'
㉝ N 18°30'31"W	480.15'
㉞ N 23°44'14"E	268.36'
㉟ N 4°17'24"W	271.17'
㊱ N 26°14'29"W	398.35'
㊲ N 2°44'35"E	253.32'
㊳ N 35°01'23"W	179.35'
㊴ N 12°19'28"E	445.37'
㊵ N 44°28'58"E	235.31'
㊶ N 17°52'48"W	416.78'
㊷ N 56°27'18"E	1035.80'
㊸ N 0°36'14"E	780.19'
㊹ N 37°04'18"E	857.73'
㊺ N 9°29'13"E	1024.01'
㊻ N 15°49'44"E	508.00'
㊼ S 70°17'50"W	841.98'
㊽ S 25°53'50"E	1223.89'
㊾ S 5°05'40"W	765.98'
㊿ S 23°09'40"W	468.48'

DATA TABLE

BEARING	LENGTH
⑥1 S 37°14'40"W	488.46'



GRAPHIC SCALE

1" = 4000'

SHEET 2 OF 2

**Exhibit "B"**