



Agenda Report

Date: November 15, 2011
To: Stephen W. Helvey, City Manager
Jeffrey W. Collier, Chief Assistant City Manager
From: Benjamin J. Pongetti, Redevelopment Manager
Subject: Whittier Main Oil Field Development Project
Conditional Use Permit No. CUP09-004

RECOMMENDATION

It is recommended the City Council review and incorporate this agenda report into the public record for the Whittier Main Oil Field Development Project - Conditional Use Permit No. CUP09-004.

BACKGROUND

The City Council held a public hearing on the Whittier Main Oil Field Development Project beginning on November 8, 2011. During the public hearing, many residents and interested persons provided testimony both for and against the Project. Testimony regarding the Project was also provided by Staff; MRS, the City's environmental consultant for the Project; and Matrix Oil Corporation (Matrix), the Project applicant. In addition, the City received numerous letters regarding the Project. The following information is provided in response to some of the issues raised during the public hearing.

DISCUSSION

A number of letters have been submitted since City staff issued the agenda report regarding the Project, and staff has developed a written response to some of those comments. Thus, this supplemental staff report is submitted to address a number of comments raised both in writing and orally through the public hearing process.

The Los Angeles County Recreation, Parks and Open Space District submitted a letter dated November 8, 2011, raising a number of environmental and other issues. Staff requested and received input from MRS regarding the environmental issues addressed below.

Impacts to 335 Acres

Impacts associated with the proposed project are defined in the EIR for vegetative areas permanently removed, vegetative areas modified for fuel modification, vegetative areas disturbed and then re-vegetated associated with grading. This totaled 28.1 acres in Appendix O. An additional 5.49 acres of critical habitat (not including previously disturbed areas, etc) could be disturbed that could experience operational noise levels above 60 dBA. Accounting for offset ratios as per the Biology mitigation measures, the total area to be restored would total 44 acres in the EIR Appendix O.

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Detailed calculations on the 335 acre number presented by the LACRPOSD have not been provided, but it appears that it is based on 800 feet from the project site and staging areas and 300 feet from all roadways. This area includes some areas that are located within the Landfill as well as areas around the Loop Trail Road, which would be used only for emergency Fire Department access. In addition, the 800 foot setback from the project site and staging areas is based on noise impacts above 60 dBA associated with construction grading activities, which would be short term and only during the daytime. The EIR also utilized the 60 dBA noise contour for impacts, but only assessed impacts associated with peak operational periods (drilling and operations concurrently) and only to critical habitats (coastal sage scrub). The 300 foot setback from all roadways was not substantiated in the comment letter and the EIR preparers are not familiar with any regulatory requirement in this regard. There is no support for the conclusion that the project will adversely impact 335 acres of property.

Air Emissions

The EIR conducted modeling associated with the potential for odor impacts. Normal operations, including drilling, would not be expected to generate odors at nearby receptors, including residences or the recreational trails. Upset conditions, however, could occur that would cause odors to impact receptors. Mitigation measures are included that have been demonstrated to be feasible in other Los Angeles area oil fields (Baldwin Hill, for example) and which would reduce the frequency of odor events to below the SCAQMD thresholds of an allowable 6 events per year. These mitigation measures would include drilling flare systems, tank pressure monitoring, the use of carbon canisters, and design reviews to identify potential additional odor sources, as well as protocols for complaint handling and event investigations.

Fugitive dust emissions would be generated during the construction phase of the project associated with soil movement, grading and travel on dirt roadways. Protocols as prescribed by the SCAQMD were utilized in the EIR to assess the potential impacts of fugitive dust and emissions levels were determined to be below the SCAQMD thresholds for impacts to humans. There remains the potential for dust associated with construction activities to settle on nearby vegetation, but this impact would be minor and temporary as the vegetation would be washed with periodic rains. Permanent and temporary impacts to areas are addressed in the EIR through the requirements for the restoration of other, offsite, areas equal to and exceeding the areas impacted as part of the project.

Noise

Noise impacts associated with construction are detailed in the EIR in section 4.5, impact N.1. Noise models were run with a worst case mix of construction equipment to assess the potential impact on area residences and recreational receptors. Impacts were determined to be less than significant as the construction activities would be temporary and the noise would be associated with construction activities, as per the Whittier Municipal Code 8.32.040. Mitigation measures limit the timeframe of the construction activities to the hours defined by the Municipal Code.

Impacts to the Gnatcatcher were assessed in the biological resources section of the EIR. Impacts associated with noise were included in the restoration areas by assessing the worst case operational noise impacts out to 60 dBA, which was identified by studies discussed in the EIR as the level which might produce impacts. This impacted an additional 5.49 acres around the facility site, which would be required to be restored at some other location. Construction noise and impacts were determined to be temporary in nature, occur only during the daytime and, therefore, impacts to wildlife were assumed to be reduced to less than significant with the mitigation of restoring the 5.49 acres discussed above.

The analysis of traffic impacts on wildlife species is addressed in mitigation measure BIO-4c which requires speed limits, speed bumps, and a limit on night driving. In addition, a wildlife monitor is required under mitigation measure BIO-I and biological training program under mitigation measure BIO-4k. Wildlife movement concerns are discussed in impact BIO.4. The Draft EIR biologists disagree with the commenter's suggestions of potentially dire ecological consequences resulting from this level of well-regulated traffic on an existing roadway.

While the noise calculations are correct as presented in the comment letter, the level of 84 dBA as a construction level would be considered a peak, short term level associated with construction. Note that the impacts identified in the EIR indicate levels of up to 56 dBA at residences and 66 dBA at the Loop Trail as a peak hourly average, which would be similar to the levels described in the comment letter. However, as indicated above, these impacts would be temporary in nature and only occur during the daytime and impacts were therefore considered to be less than significant.

Note that other construction activities, as well as traffic noise impacts, occur around the periphery of the Preserve and produce noise impacts above 60 dBA within the Preserve and are not considered to have permanent, significant impacts.

Transportation and Circulation

Impacts from traffic are assessed in the EIR and safety improvements to area intersections are proposed in mitigation measures, including modifications to the Catalina Ave/Mar Vista Street intersection, limits on parking along Catalina Ave during the test drilling phase to ensure sufficient width, and coordination with Whittier College to reduce potential conflicts with College events.

Drilling activities would produce approximately 198 round truck trips per well drilled, or an average of 6.6 per day, and about 600 automobiles per well, or an average of 20 per day. Mitigation measures requiring carpooling would reduce the auto trips.

Visual Resources

The EIR identified the visual impacts as significant and unavoidable. Mitigation measures requiring landscaping could effectively shield the processing equipment and vehicle activities from public viewsheds, but the drilling rig would remain clearly visible above tree tops and ridgelines. Lighting impacts would be reduced through shielding of light sources, but some lighting would still be visible in the area, such as the red night light on the top of the drilling rig.

Another letter was received from Shute, Mihaly & Weinberger dated November 9, 2011, on behalf of a group called Hills for Everyone. This letter raised both environmental and legal issues.

Sufficiency of Responses to Comments

At least one commenter has stated that the Final EIR fails to respond to comments on the Draft EIR. In compliance with CEQA Guidelines section 15088, the Final EIR responds in writing to all comments that were timely submitted on the current Draft EIR. The responses answer questions, provide clarifying information, and explain the basis for the EIR's conclusions. Where commenters re-submitted comments on a prior version of the Draft EIR (a draft prepared for a previous iteration of the project that is no longer being proposed by the applicant or under consideration), those comments were responded to as appropriate. The responses to comments evidence a good faith attempt at responding to all timely submitted comments on the current Draft EIR.

All letters, including comment letters on the prior EIR that were submitted along with the comment letter, and the responses to comments are included in Appendix M of the Final EIR. The comment letter from Hills For Everyone, dated December 6, 2010, as well as the comment letter dated July 21, 2011, were included in Appendix M pages M-264 and M-1523 respectively, along with responses.

Recirculation

Some commenters have suggested that the EIR should have been recirculated as a result of the project revisions discussed and analyzed in Appendix O. The information contained in this Appendix O does not require the City to recirculate the Draft EIR, as this information does not constitute significant new information as defined under CEQA Guidelines section 15088.5. Under CEQA, "significant new information" is defined as a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

None of these circumstances are present here. All of the modifications are within the "envelope" of what was analyzed in the Draft EIR. No new significant environmental effects would result from the design modifications and no new mitigation measures would be required. In fact, some of the impacts disclosed in the Draft EIR (such as the number of traffic trips) would decrease. Overall, the design modifications would lessen impacts to the habitat area.

In some limited instances (such as biology, aesthetics, and noise), the severity of impacts would slightly increase. The increases would not rise to a level that would change the impact classification already disclosed in the Draft EIR, nor would they result in impacts that are substantially more severe than previously disclosed. As discussed in Appendix O, the impacts in these areas would increase only marginally. Additionally, the existing mitigation in the Draft EIR would continue to reduce these impacts. For biology and noise, the proposed mitigation would continue to reduce these impacts to a less than significant level. For aesthetics, the mitigation detailed in the Draft EIR also would reduce this impact, however, the impact, as disclosed in the Draft EIR, would continue to be significant and unavoidable. As disclosed in the Draft EIR, no other mitigation is available to reduce this impact.

In short, recirculation is not required as a result of these potential project design modifications as no substantial changes have been proposed to the project and no major revisions have been to the EIR. Cal. Pub. Res. Code § 21166.

Inconsistency

A. Zoning Code

As stated in Section 4.11 of the DEIR, oil exploration is allowed in all zones (including the Open Space Zone) with a Conditional Use Permit. Please see Section 18.52.030 of the City's Zoning Ordinance. It should be noted that Section 18.52.050(A) regarding Conditional Use Permits specifies that "if any use is designated as a permitted principal use in any zone the conditional use permit requirement shall not apply to that use in that zone." Thus, because the R, C, and M zones specify those uses allowed with a conditional use permit under Section 18.52.030 as principally permitted uses, no CUP is required for drilling operations in those zones. However, because the Open Space Zone does not call out 18.52.030 uses (including oil drilling) as a principally permitted use, a CUP is required.

B. General Plan Policies

As stated in Section 4.11, Land Use and Policy Consistency Analysis, the proposed Project could be potentially inconsistent with several goals and policies of the General Plan, but would not produce significant impacts with the implementation of mitigation required by the California Environmental Quality Act (CEQA). The CEQA Guidelines, Section 15125(d), state, "the EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans." While CEQA requires a discussion of consistency with public plans, inconsistency does not necessarily lead to a significant impact. Inconsistency with public plans creates significant impacts under CEQA only when an adverse physical effect would result from the inconsistency. It is the responsibility of the City Council, the lead CEQA decision maker, to make the final determination regarding consistency issues.

The City of Whittier General Plan was adopted in 1993 and is the most current guiding document for future growth and development within the incorporated area of the City. That said, comprehensively, the Project, as mitigated, is found to be consistent with the goals and policies of the City of Whittier General Plan as extensively detailed in the EIR. Further, the Project is also consistent with the City's zoning ordinance as oil and gas production is allowed in all zones (including the Open Space Zone) with a Conditional Use Permit (Section 18.52.030).

In addition, the Hills For Everyone representatives have contended specifically that the Project is inconsistent with the General Plan even as mitigated because approval of the Project does not "preserve open space areas" and "protect existing wildlife habitat."

Staff believes that the Project as mitigated does protect existing wildlife habitat, and in fact with the mitigation measures required will expand and enhance existing wildlife habitat. Moreover, given the fact that the City intends to provide replacement open space land for the Project site, and ensure there is no net loss of open space, this is consistent with the goal of preserving open space areas. Indeed, revenues from the Project that will be paid to both the Habitat Authority and to the City will provide funding for both protecting and preserving existing and additional open space and wildlife habitat.

A project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. Perfect conformity is not required, but the project must be compatible with the general plan's objectives and policies. A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear. Although the courts have articulated various standards of review of a local agency's determination that a project is consistent with the general plan, those standards all have in common the affording of great deference to the lead agency's determination. Nevertheless, the lead agency's consistency finding still must be supported by evidence. *Endangered Habitats League, Inc. v County of Orange*, 131 Cal. App. 4th 777, 32 Cal. Rptr. 3d 177 (2005).

The Commenter points out that the FEIR found an inconsistency with Policy 2.6, and there is no reference within this discussion of how that inconsistency can persist or is somehow mitigated by adherence to competing policy considerations. Based on the general goal under which policy 2.6 is located, Goal 2, staff believes the City may be able to conclude that the project is in fact consistent with Policy 2.6. Although the policy focuses on widening and construction of "roads" generally, and does discuss additional traffic in residential and open space areas generally, Goal 2 is explicitly concerned with "public road systems" and the "move[ment of] private automobiles within the City safely, efficiently, and with the minimum impact on residential neighborhoods." With mitigation measures designed to minimize truck trips through the residential streets, requirements for carpooling, speed limits, requiring coordination with Whittier College as to parking on Penn Street, and the temporary nature of most of the truck traffic, the project seems to contribute to the provision of safe, efficient and minimal movement through public roads. In addition, the roads being widened and newly constructed are not themselves part of the "public road system." With respect to Policy 1.2, the North Access Road is on the project site, which is not, and will not be open to the public. In addition, both the lease and proposed conditions of approval require that the Applicant is to completely maintain the project site and roads. Finally, the discussion regarding Environmental Resource Management Policy 7.1 in the DEIR was an inadvertent carryover from the original project EIR, where impacts to wildlife corridors were identified as significant and unavoidable. This was corrected in the Final EIR, as that discussion is no longer relevant to the proposed Project. Thus, there is no inconsistency with the General Plan in this respect.

Thus, staff believes that the Council, as final decision makers on this Project, can find that the Project, as mitigated, is fully consistent with both the City's General Plan and the City's Zoning Ordinance. Mitigation measures identified in Final EIR Sections 4.1 Air Quality, 4.5 Noise and Vibration, 4.6 Aesthetics and Visual Resources, and 4.14 Recreation, would minimize impacts and provide a pathway toward a natural balance between the various resources in the proposed Project area. However, note that the decision makers will weigh the compatibility of the Project with the goals and policies of the General Plan in their consideration of the Project.

C. Resource Management Plan Consistency

There have been concerns expressed that the Project continues to be inconsistent with the Resource Management Plan (RMP) governing the Preserve. The Final EIR on pages 4.2-63 through 4.2-65 details that with the imposition of mitigation, the Project will actually be consistent with the RMP. CEQA does not require a finding of significance where a proposed project is inconsistent with a planning level document, except where an environmental impact will result. In this case, the EIR discloses the Project has the potential to be inconsistent with the RMP. However, biological mitigation is imposed upon the Project to ensure that no significant environmental impacts will result from this potential inconsistency. Thus, this imposition of biological mitigation will ensure that the Project does not cause environmental impacts that would be inconsistent with the goals and policies of the RMP. As such, the Project is consistent with the RMP. It should also be noted that through the revenue projections detailed in Appendix H to the Final EIR, funding could be provided to the Habitat Authority that will further ensure Project consistency with the RMP by providing a revenue funding source for the Preserve.

Responses to Government Agencies and Local Citizens

A. Project Setting

The Draft EIR contains a thorough discussion of the existing baseline of environmental resources, including potential sensitive or endangered species. The Draft EIR relies on extensive and recent surveys that have been conducted of the site by the Habitat Authority in the course of their restoration efforts at the site.

The preparers of the biological resource section did not restrict their review to the sensitive resources in the immediate Project vicinity. The RMP and data collected from several biological technical reports that were prepared for the general area including the CNDDDB search.

B. Biological Resources

Consistent with interpretations of CEQA used by the City of Whittier and most other lead agencies in the region, the Draft EIR treated all species listed as threatened or endangered, or formally recognized by the state as being California Species of Special

Concern. In making these evaluations, the Draft EIR biologists have considered the "special-status" taxa mentioned in comments on the Notice of Preparation for the Project. They also reviewed numerous biological reports prepared within the Chino-Puente Hills in recent years, the California Natural Diversity Data Base, California Native Plant Society Online Inventory of Rare and Endangered Plants, Consortium of California Herbaria online inventory. Finally, they worked closely with the Habitat Authority and its ecologists to identify all taxa of concern to be considered in the Draft EIR. At the Habitat Authority's direction, several focused biological surveys were conducted on the Project Site by LSA Associates and Glenn Lukos Associates between 2007 and 2010.

None of the resources reviewed by the Draft EIR biologists, and no input received from the Habitat Authority, suggested that bryophytes, lichens, or butterflies warrant specific consideration in this CEQA analysis. If the specific evaluation of these taxa was as central to the task of conserving biodiversity, as claimed in this comment letter, these taxa would have at least warranted *mention* in the Habitat Authority's own 2007 Resource Management Plan. Although these taxa do contribute to biodiversity, biological surveys and impact analyses considered appropriate and adequate under CEQA have typically involved the evaluation of vascular plants, vertebrates, and any butterflies or other lower taxa listed as threatened or endangered by state or federal governments (or that can otherwise "be shown to meet the criteria" specified in CEQA Section 15380). Non-listed invertebrates are sometimes evaluated, such as for projects with potential to affect roosting groves for monarch butterflies. Generally, however, CEQA analysis has stopped short of evaluating the lower taxa, in part due to a general lack of detailed knowledge about these taxa and their distributions — not only among consultants, but also among specialists. For these reasons, the EIR preparers do not agree with the commenter's characterization of the Draft EIR as being inadequate with respect to its focus on evaluating potential effects of Project implementation on the higher-level plants and wildlife that are recognized as having "special status" by state and/or federal agencies.

Given that so little is known about the actual status and distribution of the lower taxa, and given that none of the species potentially present is listed as rare or endangered by federal or state agencies, or is recognized as a California Species of Special Concern, there is no clear basis for establishing the potential significance of any potential impacts to these taxa. If the commenters believe that such a basis exists for certain taxa possibly present on the Project Site, the procedure for establishing this is through peer-reviewed publication of their status and distribution, with recognition of their rare status by state and/or federal resource agencies — procedures well beyond the scope of CEQA analysis.

Nevertheless, in the interest of providing a complete baseline and well-supported impact analysis, the EIR preparers have researched the known status, distribution, and habitat requirements of the taxa of concern to the commenters, and have worked with an

entomologist, Dr. Emile Fiesler, to conduct a supplemental survey to search for these species. The Draft EIR biologists have evaluated the potential of the Project to result in potentially significant impacts to any additional species that can be shown to meet the criteria specified in CEQA Section 15380.

Of the four butterfly species identified in this comment, only the monarch is included on the Special Animals list. Nobody has observed monarchs roosting on the site, or suspects that they might do so because the site is presumably too far from the coast to provide suitable roosting habitat. A species of milkweed, *Asclepius californica*, has been recorded on the Project Site, but it is rather sparse there and could not support a "winter concentration" of monarchs. That some of the butterflies present, or potentially present, on the site are believed to be "declining" in the region does not imply that they warrant specific evaluation under CEQA. If their populations are truly of conservation concern, they should be identified as such by state or federal resource agencies. The species in question do not satisfy these criteria, and Project implementation would not impact extensive patches of host food plants for these species. Finally, the extensive restoration of degraded areas that is being proposed as part of the Project can be expected to offset any potential adverse Project effects to native invertebrate populations associated with locally native plant species.

C. GHG Emissions

The EIR correctly identifies the emissions of GHG as potentially exceeding the SCAQMD thresholds for GHG emissions and therefore the impacts would be potentially significant. Mitigation measures that could reduce these emissions to less than the thresholds are potentially available, but they have not been proven to be available, specific contracts for offsets have not been provided and determined to be feasible, and therefore the classification of the impacts remained significant and unavoidable. Extensive information is provided in the EIR on the types of mitigation measures that could be utilized; however, as uncertainty exists as to their feasibility, the impacts conservatively (in compliance with CEQA's mandate to consider the worst-case scenario) remained significant and unavoidable in the Final EIR.

The EIR provides the outlines and detailed requirements of a program that would quantify and then require the implementation and quantification of the measures which could reduce these emissions. However, this is not deferring mitigation because, most importantly, the impacts remained significant and unavoidable in the EIR. The case discussed in the comment, *Communities for a Better Environment vs. City of Richmond*, also prescribed a mitigation plan and potential measures, but allowed these mitigation measures to reduce the impacts to less than significant. Relying on future mitigation actions, whose feasibility has not been established, to reduce impacts to less than significant, would be deferral of mitigation under the legal precedents established by previous cases. For this project and this EIR, it is not a deferral as the impacts remained significant and unavoidable. These issues were clearly discussed in the response to comments in Appendix M.

D. Trenching

Trenching associated with the installation of water supply lines to connect to alternative water supplies located at the Ocean View Reservoir or along Colima Road would be required as part of the mitigation measure FP-1a. Impacts of trenching are discussed in the respective sections, both Biology and Air Quality, under the sub-sections titled "Other issue Area Mitigation Measure Impacts". Air quality discussed a number of mitigation measures that could increase construction requirements, including traffic measures, aesthetic measures, etc., and would also include trenching. However, none of these additional construction measures were found to increase the peak day emissions and would therefore not change the severity of the air quality impacts.

Biology section of the EIR indicates that "Mitigation measures FP-1a, requires as mitigation that additional firewater supplies be developed including the possibility of installing a connection to the Ocean View reservoir. This would require trenching across an area of the Preserve which would result in a marginal increase in the amount of disturbed area and is already accounted for in the disturbed areas calculated as part of the staging and parking areas. This disturbance would be located exclusively in disturbed and non-native grassland habitats and would not increase the severity of existing impacts."

Therefore, additional trenching impacts associated with mitigation measures have been addressed in the EIR.

E. Cumulative Impacts

The Draft EIR does not conclude that the proposed Project and other contributing projects each mitigate their own impacts and therefore there are no subsequent cumulative impacts. The Draft EIR proposes a number of additional cumulative mitigation measures including those listed in Biological Resources, section 4.2.6, and states that the implementation of these measures would reduce these cumulative impacts to less than significant.

Section 4.2.6 discusses the cumulative project list provided in Section 3.0 and provided details of specific projects.

Cumulative biological impacts require: (1) reducing noise impacts at the other Matrix drilling operation in Sycamore Valley; (2) preventing simultaneous test-drilling, construction, or redrilling of wells during construction work on the Tehachapi Renewable Transmission Project; and (3) adding recommended Cumulative mitigation measure

BIO-3 which requires the Applicant to fund a multi-year research study on wildlife movement.

Trenching would require approximately 800 feet of trenching, which could be conducted along the area that would be disturbed associated with the installation of temporary power poles. This area of disturbance was included in the area calculations presented in section 4.2, Biological Resources. Section 4.3.5 states that "This disturbance would be located exclusively in disturbed and non-native grassland habitats and would not increase the severity of existing impacts" and is therefore addressed in the DEIR.

F. Alternatives

1. Landfill Alternative as the ESA

The Savage Canyon Landfill Alternative is not rejected from the screening analysis and is in fact carried through the EIR for complete analysis. However, the Alternative is found less desirable because of potential land use impacts and permit obstacles that would render it potentially infeasible and because it does not achieve all of the objectives of the Project. For these reasons, the mitigated proposed Project was selected as the environmentally superior alternative. The decision makers may decide to select another combination of components for the environmentally superior alternative based on community concerns and issue area importance to the community. The Savage Canyon Landfill Alternative has some similar impacts as the proposed Project, with the exception of Recreation impacts, which the Landfill alternative does not have. As stated in the analysis, "The disadvantages of this alternative over the proposed Project are that there would be a substantial reduction in the amount of oil that could be recovered from the reservoirs, estimated at recovering 52 to 59 percent of the amount that the proposed Project could recover. There would also be potential impacts to the life of the Landfill as the development could infringe upon areas of the Landfill that are planned for future waste disposal. The waste would have to be transported elsewhere incurring transportation impacts and emissions impacts from disposal trucks. In addition, there could still be biological impacts to occupied California gnatcatcher habitat and to the wildlife corridor as the location is closer to "High Quality" habitat, thereby potentially impacting wildlife movements through the corridor. Finally, permitting of oil and gas facilities within a Landfill operation is considered speculative and the outcome of an application for such a Project is unknown. Information regarding the permitting of such a facility within an existing landfill was unavailable from CalRecycle. Existing landfill regulations do not contemplate oil and gas extraction and processing activities as proposed under this Alternative. Permitting could take years and the outcome would be uncertain at best. Additional engineering would be required to account for the lost landfill area that would be used for this Alternative and to provide adequate waste handling and eventual landfill closure."

2. Narrow Range of Alternatives

The EIR preparers disagree with the contention that the Draft EIR does not consider a reasonable range of alternatives. In fact, the Draft EIR contains a number of alternatives that were analyzed and in some cases discarded from further analysis because of infeasibility, inability to meet Project objectives or because they were unable to lessen the level of impacts presented under the proposed Project. CEQA Section 15126.6 e states:

"An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible."

The Draft EIR was not able to locate a parcel in the heavily populated area of the City of Whittier that is more than 1,000 feet from a residence or business and outside of the Preserve and close enough to the resources to allow for extraction. The only exception to these criteria was the Landfill location.

The North Site does not present a substantial advantage biologically as it is also located within the Preserve, although it is located outside of the Core Area. It is also located within 500 feet of the closest residence, which would potentially introduce significant and unavoidable impacts due to vibration, noise and safety and risk. As it was determined in the screening analysis that it would increase the significant and unavoidable impacts, it was discarded from further review.

Inadequate Justification

Please see responses on Savage Canyon above.

Responses to Additional Legal Issues

Proposition A – Release of Lands and the District's Discretion

Several commenters have raised issues regarding the requirement that the Los Angeles County Regional Park and Open Space District ("District") "release" the project site lands from Proposition A restrictions. As discussed below, this language means that the District must be financially compensated for the land that was purchased with Proposition A funds or be provided replacement lands. As part of its "release" of the lands, the District does not issue a CUP or otherwise approve the project. The District does not have a process for issuing CUPs, and would not have the authority to issue such a permit within Whittier's jurisdiction in any event. As to the release from Proposition A restrictions, that process is underway.

As background, Proposition A, which created the District, was adopted on November 3, 1992, and levied assessments to fund the purposes of the District. Subsection 16(b) of Proposition A specifies the obligations of a recipient of Proposition A funds when that

recipient has purchased real property but later sells or otherwise disposes of that real property:

"(b) If the use of the property acquired through grants pursuant to this order is changed to one other than a use permitted under the category from which the funds were provided, or the property is sold or otherwise disposed of, an amount equal to the (1) amount of the grant, (2) the fair market value of the real property, or (3) the proceeds from the portion of such property acquired, developed, improved, rehabilitated or restored with the grant, whichever is greater, shall be used by the recipient, subject to subdivision a of this Section, for a purpose authorized in that category or shall be reimbursed to the Parks Fund and be available for appropriation only for a use authorized in that category.

If the property sold or otherwise disposed of is less than the entire interest in the property originally acquired, developed, improved, rehabilitated or restored with the grant, an amount equal to the proceeds or the fair market value of the property interest sold or otherwise disposed of, whichever is greater, shall be used by the grantee, subject to subdivision (a) of this Section, for a purpose authorized in that category or shall be reimbursed to the Parks Fund and be available for appropriation only for a use authorized in that category. Nothing in this Section 16 shall limit a Public Agency from transferring property acquired pursuant to this order to the National Park Service or the State Park System, with or without consideration." [Emphasis added.]

The City successfully applied for Proposition A funds and, in November 1993, entered into a Project Agreement (Grant No. 58L1-94-0034). In applying for the Proposition A funds, the City agreed to use the real property acquired therewith for "the purposes of" Proposition A. Paragraph 10 of the Project Agreement states as follows:

"10. If Applicant sells or otherwise disposes of property acquired or developed with grant monies provided under this Agreement, Applicant shall reimburse the District in an amount equal to the greater of 1) the amount of grant monies provided under this Agreement; 2) the fair market value of the real property; or 3) the proceeds from the portion of the property acquired, developed, improved, rehabilitated or restored with grant monies.

If the property sold or otherwise disposed of is less than the entire interest in the property originally acquired, developed, improved, rehabilitated or restored with the grant monies, then Applicant shall

reimburse the District an amount equal to the greater of: 1) an amount equal to the proceeds; or 2) the fair market value." [Emphasis added.]

The current project proposes activities which the City recognizes could render the use of up to seven acres of property in the Whittier Hills incompatible with Proposition A purposes. Thus, the City must provide sufficient funds to the District under current market conditions to replace the approximate seven acres of real property no longer devoted to Proposition A purposes. The word "reimburse" is a clear limitation of the City's obligation, making certain that a reimbursement sufficient to replace lost property is the extent of that obligation. In that regard, according to the California Supreme Court, "the primary and ordinary meaning of the word 'reimbursement' is 'to pay back, to make restoration, to repay that expended.'" (Webster's New International Dictionary, Section Edition; Funk and Wagnall's Standard Dictionary.)" *County of Los Angeles v. Frisbie*, 19 Cal. 2d 634, 640 (1942). The District is thus restored when it is put in the financial position to replace the real property lost for Proposition A uses.

Public Trust Doctrine

Some commenters have contended that the proposed project violates the public trust doctrine. Staff believes that this is not the case.

Generally, when exercising its right to sell or lease land, municipalities have broad discretion to negotiate any terms it believes are in the public's best interest without violating the public trust doctrine. *Western Oil & Gas Assn. v. State Lands Com.*, 105 Cal. App. 3d 554, 566-567 (1980). The California Supreme Court has upheld the lease of a small park area (2.5 acres out of 400 acres of park) for a hotel where the public trust doctrine is complied with and where the park continues to be for the use of the public. *Harter v. City of San Jose*, 141 Cal. 659 (1904).

Here, approving the proposed project will not violate the public trust doctrine. As stated in the EIR, one of the City's objectives in this project is to obtain a stream of revenue that can maintain the Habitat Authority and the Preserve. In addition, the leased area is only a small fraction—7 acres of 1,290 acres—of the larger Preserve. The current situation is thus similar to the circumstances in *Harter*, where the California Supreme Court determined that the project complied with the public trust doctrine.

CUP Findings

As noted in staff's prior report on this Project, to conditionally approve an oil and gas operation in an OS zone, the City is required to make the following findings consistent with Section 18.52.040 of the Municipal Code:

1. That the site proposed for the use is adequate in size, shape and topography;

2. That the site proposed for the use has sufficient access to streets which are adequate, in width and pavement type, to carry the quantity and quality of traffic generated by the proposed use;
3. That the proposed use will not unreasonably interfere with the use, possession and enjoyment of surrounding and adjacent properties;
4. That the proposed use will be compatible with the permitted uses of surrounding and adjacent properties;
5. That the use will, as to location, operation and design, be consistent with the general plan, any applicable specific plan, and the Whittier zoning regulations.

Some have argued that the Council cannot make these findings because the project site, as it currently exists, does not meet, for example, access requirements. This is supposedly demonstrated by the fact that among the conditions of approval are requirements that the Applicant upgrade and widen roads providing access to the consolidated site. The commenters misconstrue the requirement. Determination of whether the proposed project meets the required conditional use permit findings is based upon the project as a whole, and as conditioned. Thus, the requirements that access roads be upgraded, widened or maintained by the Applicant are considered in determining whether access is adequate. With the proposed mitigation measures and conditions, staff believes that the City Council can make these findings for the following reasons:

The Project proposes to occupy approximately 7 acres of the 1,290-acre City owned Whittier Main Oil Field site. The Project has been designed to achieve a grading plan that balances cut and fill and minimizes soil export. Recommended conditions of approval require City review and approval of detailed grading plans, erosion control and restoration of disturbed slopes. The Project site is adequate in size, shape and topography to accommodate the proposed oil and gas production and processing facilities.

The Project will add additional truck and vehicle trips to City streets. Primary Project travel routes include Catalina Avenue, Penn Street and the North Access Road. Conditions of approval recommended for the Project require a Traffic Management Plan, off-site staging of construction vehicles and equipment, and car or van pooling to reduce impacts on City streets. The Project EIR found that there are no significant and unavoidable impacts to transportation and circulation, including impacts to streets. Subject to conditions of approval, the Project site has adequate street access to accommodate the proposed oil and gas production and processing facilities.

The Project will re-introduce oil and gas production and processing facilities into an open space area. The EIR finds that certain impacts cannot be reduced to less than

significant levels and would remain significant and unavoidable. These impacts include air quality, aesthetics, hydrology and water quality, land use and policy consistency and recreation. However, these potential impacts would be overridden by the benefits of the restoration activities at the Preserve that would be undertaken as a result of the Project. Without the approval of the Project, the Preserve is unlikely to have funding that would allow continued restoration and preservation of the site. The Oil and Gas Lease between the City of Whittier and Matrix provides for continuing funding for the Habitat Authority with annual administrative fees and mitigation fees upon issuance and acceptance of a CUP. The Project would provide a stable source of funding for the Habitat Authority for as long as the wells produce oil and gas.

In addition, the City would significantly benefit from funds received from the royalties generated from oil and gas production. Those funds could provide for enhancements to public services and infrastructure throughout the life of the Project. Some of those improvements could include education, safety, traffic, beautification projects and other community benefits. Although the Project would interfere with the use and enjoyment of the Preserve, the benefits of the Project to the Preserve and the community do not make this interference unreasonable.

Matrix has redesigned the Project to minimize impacts to habitat and surrounding land uses. However, as noted above, regardless of recommended mitigation measures, the EIR finds that certain impacts cannot be reduced to less than significant levels and would remain significant and unavoidable. Because the Project would provide a long-term revenue stream that would directly benefit the Preserve and the community, the proposed oil and gas facilities are considered compatible with the surrounding properties.

The City of Whittier General Plan permits oil and gas production in all land use districts and the City's Zoning Ordinance allows oil and gas production drilling in all zone districts with a Conditional Use Permit. The City awarded a lease to Matrix that could permit resumption of oil and gas extraction from the proposed Project Site, subject to environmental review and approval of a discretionary conditional use permit. Matrix has been coordinating with the City to develop plans to obtain a conditional use permit, while considering ecological concerns to preserve natural habitats. Although the Project would result in unavoidable adverse impacts, the long-term benefits of the Project to the Preserve and community bring the Project into consistency with the spirit of the City General Plan and zoning regulations.

Use of Funds from the Lease

This is a legal issue, and not an issue relating to the project specifically. The City has obtained an independent legal opinion from Carlyle W. Hall of Akin Gump that the revenues from oil and gas belong to the City of Whittier, and this opinion is supported by substantial legal authority. This issue will be discussed and resolved with the

Proposition A District. Reference to the letter dated January 6, 2010 from the Director of the County of Los Angeles Department of Parks and Recreation does not change this. The letter represents the preliminary position of staff. The Council and the County Board of Supervisors are the parties who will ultimately determine their respective intent regarding the contract between them. These issues are subject to negotiation and agreement, and if agreement cannot be reached, a court may ultimately determine how the revenues may be used. The City Attorney's Office is confident that the analysis prepared by Mr. Hall is correct.

Applicability of Conservation Easements

The Claremont Land Group on behalf of the Open Space Legal Defense Fund previously asserted that the Project could not be approved because of alleged conservation easements over the property. As previously noted, the Unocal easements offered are of no consequence because the Project site is not on the Unocal property. As previously explained, the other easement documents offered relate to the former Chevron property. Staff has reviewed those documents. They do not actually establish a conservation easement over the entire 960 acres purchased from Chevron. Instead, they demonstrate a declaration of Chevron's intent as the grantor of the property to reserve to itself the right to create a conservation easement area so that it could get credits with the U.S. Department of Fish and Game or Fish and Wildlife for habitat restoration and conservation value. This declaration and offer was limited to a term of five years after which, if the area was not specifically designated and dedicated it would go away and the offer would become null and void. No conservation easement was ever recorded over this property.

The current Project includes a proposed condition of approval to impose a conservation easement upon all of the remainder of the leased property (the remaining approximately 1,283 acres outside of the approximately 7 acres used for the proposed project) in a form to be approved by the City. It will be placed over all of the City-owned Preserve land, excepting only the surface area specifically approved for use in the project through the Conditional Use Permit. If the Project is approved, the City intends to enter into that conservation easement with the Habitat Authority. A draft of the proposed conservation easement is attached as an exhibit to this report.

Responses Peter Jahn Letter Dated Nov 9, 2011

These comments were made previously during the Planning Commission and EIR phase and have been incorporated as mitigation measures and as conditions of approval.

The requirement for a FMEA, or Process Hazards Analysis, has been included in the conditions of approval. The request for double walled pipes would be appropriate along places where piping could be placed in conduits. However, along the entire pipeline

route from the project site, down Colima, the installation of the pipeline within a conduit would present substantially challenging construction issues. Double walled pipeline are normally placed as bores to cross roadways or within facilities. The curving of a pipeline along a long route makes the installation of double walled pipes extremely difficult and potentially introduces issues related to construction techniques that might actually increase the risks of weld failures. Modern day pipelines utilize very durable pipe coatings and steels and have very low failure rates. The pipeline systems would be equipped with a leak detection system to help identify leaks.

Secondary containment is required around all facility components to contain at least 110% of the largest potential spill. DOGGR requires testing to ensure that injection zones do not contaminate freshwater aquifers.

CONCLUSION

The information in this report addresses the majority of those questions raised or issues addressed after the writing and submittal of the original agenda report. Staff continues to conclude that the benefits of the Project to the Preserve and community outweigh adverse impacts associated with the proposal. Staff continues to recommend certification of the Environmental Impact Report and approval of CUP09-04 subject to the implementation of the associated Conditions of Approval and mitigation measures identified in the Mitigation Monitoring Program.

Submitted by:


Benjamin J. Pongetti
Redevelopment Manager

Reviewed by:


Jeffery S. Adams, Planning Services Manager

Prepared by:


Kimberly Hall Barlow, Assistant City Attorney

Attachment: A – Draft Conservation Easement

[Handwritten signature]

[Handwritten signature]

RECORDING REQUESTED BY AND)
 WHEN RECORDED MAIL TO:)
)
 Puente Hills Landfill)
 Native Habitat Preservation Authority)
 7702 Washington Ave, Suite C)
 Whittier, CA 90602)
)
)
)

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this _____ day of _____, 201__, by City of Whittier, a charter city ("Grantor"), in favor of Puente Hills Habitat Preservation Authority, a joint exercise of powers entity established pursuant to Government Code section 6500 *et seq.* ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the County of Los Angeles , State of California, described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. The Property possesses wildlife and habitat values (collectively, "conservation values") of great importance to Grantor, Grantee, and the people of the State of California.

C. Grantee is authorized to hold conservation easements pursuant to Civil Code Section 815.3. Specifically, Grantee is a park agency established to acquire, maintain and restore native habitat in the Whittier and Puente Hills and is authorized to acquire and hold title to real property and conservation easements.

D. The Property is comprised of three areas depicted on Exhibit A: Area 1 is the area that will not be disturbed by surface entry, occupation and ancillary road use by the lessee under the City of Whittier Oil and Gas Lease; Area 2 is the area that will be disturbed by surface entry, occupation and ancillary road use by lessee under the City of Whittier Oil and Gas Lease; Area 3 is the temporary staging area for the Whittier Main Oil Field Development Project.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

1. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including Civil Code Section 815, *et seq.*,

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Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property and Grantee agrees to accept the conservation easement subject to all existing uses, all easements, leases, and restrictions of record, and the conditional use permit(s) and all other entitlements for the Whittier Main Oil Field Development Project (defined herein as the City of Whittier Oil and Gas Lease and the right granted thereunder) approved concurrently with the approval of this Conservation Easement by Grantor. The recitals are incorporated into the Covenants, Terms, Conditions and Restrictions. The parties agree that the restrictions and obligations of this Conservation Easement will become effective as to Area 2 when the City of Whittier Oil and Gas Lease is terminated and the surface area is restored. The parties agree that the restrictions and obligations of this Conservation Easement will become effective as to Area 3 when the term of the use of the temporary staging area expires and the area is restored. Purposes. The purposes of this Conservation Easement are to ensure the Property will

be retained in perpetuity in its natural condition and to prevent any use of the Property that will impair or interfere with the conservation values of the Property. Grantor and Grantee intend that this Conservation Easement will confine the use of the Property, subject to all existing uses, all easements, leases, and restrictions of record, and the conditional use permit(s) and all other entitlements for the Whittier Main Oil Field Development Project approved concurrently with the approval of this Conservation Easement by Grantor, to such activities that are consistent with those purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (a) To preserve and protect the conservation values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, and for scientific research, habitat restoration, and interpretive purposes by Grantee or its designee, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property;
- (c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement;
- (d) All mineral, air and water rights necessary to protect and to sustain the biological resources of the Property; however, this shall not prevent Grantor from extracting minerals below the surface and retaining all proceeds there as provided in Section 5 herein and
- (e) All present and future development rights allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise.

3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement, with the exception of activities required for invasive non-native plant eradication and/or habitat restoration which the parties acknowledge are consistent with the purposes of this Conservation Easement, is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, Grantee, Grantee's agents and third parties, are expressly prohibited:

- (a) Unseasonal watering with the exception of irrigation required for habitat restoration; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement;
- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;
- (c) Agricultural activity of any kind including grazing, with the exception of grazing for fire hazard reduction or weed control;
- (d) Commercial or industrial uses;
- (e) Any legal or de facto division, subdivision or partitioning of the Property;
- (f) Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind including without limitation baseball fields and soccer fields;
- (g) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (h) Planting, introduction or dispersal of non-native or exotic plant or animal species;
- (i) Filling, dumping, excavating, draining, dredging, mining, or drilling loam, soil, sands, gravel, rocks or other material on or below the surface of the Property;
- (j) Altering the surface or general topography of the Property, excluding building of park roads, trails, and trailheads;
- (k) Removing, destroying, or cutting of trees, shrubs or other native vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, or (3) prevention or treatment of disease; and
- (l) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, excepting regular maintenance activities, abatement of erosion or drainage problems, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

4. Grantor's and Grantee's Duties. Grantor and Grantee shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Property.

5. Grantor's Reserved Rights. Grantor reserves to itself, and to its , successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are not expressly prohibited or limited by, and are consistent with the purposes of this Conservation Easement. Grantor specifically reserves the right to: A. extract oil from the Property but without surface right of entry other than that contemplated in the conditional use permit and all other entitlements for the Whittier Main Oil Field Development Project approved concurrently with the approval of this Conservation Easement by Grantor; B. use the Property to comply with all applicable County of Los Angeles Fire Department conditions on the Whittier Main Oil Field Development Project; C. use the Property to comply with all California Division of Oil and Gas and Geothermal Research regulations applicable to the Whittier Main Oil Field Development Project; D. use the Property for the placement of underground oil and gas pipelines, methane gas pipelines, and waste water pipelines, and; E. enter the Property for the purpose of making any required earthwork, structural and drainage improvements necessary to maintain or repair the adjacent public streets and to correct any drainage or erosion conditions to protect public safety.

6. Remedies. If Grantor or Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, that party shall give written notice to the party in violation of such violation and demand in writing the cure of such violation. If the party in violation fails to cure the violation within fifteen (15) days after receipt of written notice and demand, or if the cure reasonably requires more than fifteen (15) days to complete and the party in violation fails to begin the cure within the fifteen (15)-day period or fails to continue diligently to complete the cure, an action at law or in equity may be brought in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to recover any damages a party may be entitled to recover for violation of the terms of this Conservation Easement or for any injury to the conservation values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury.

If Grantor or Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the conservation values of the Property, Grantor or Grantee may pursue its remedies under this Section 6 without prior notice to Grantee or Grantor or without waiting for the period provided for cure to expire. Grantor's or Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. The parties agree that remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantor or Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantor or Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive. The failure of Grantor or Grantee to discover a

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violation or to take immediate legal action shall not bar Grantor or Grantee from taking such action at a later time.

If at any time in the future Grantee or Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, notwithstanding Civil Code Section 815.7, the California Attorney General has standing as interested parties in any proceeding affecting this Conservation Easement.

6.1. Costs of Enforcement. Any costs incurred by Grantor or Grantee, where it is the prevailing party, in enforcing the terms of this Conservation Easement against the party in violation, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by the negligence or breach of this Conservation Easement by the party in violation shall be borne by the party in violation.

6.2. Discretion of Grantor and Grantee. Enforcement of the terms of this Conservation Easement by Grantor or Grantee shall be at the discretion of the enforcing party, and any forbearance by Grantor or Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantor or Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantor's rights or Grantee's rights under this Conservation Easement. No delay or omission by Grantor or Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

6.3. Acts Beyond Grantee's or Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantor or Grantee to bring any action for any injury to or change in the Property resulting from (i) any natural cause beyond control, including, without limitation, fire not caused by one of the parties, flood, storm, and earth movement, or any prudent action taken by one of the parties under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantor or its employees or Grantee or its employees.

7. Access. This Conservation Easement conveys a general right of access to the public consistent with the terms on conditions of this easement.

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property subject to Grantor's management agreement with Grantee and Grantee's obligations thereunder. Grantee remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement Deed, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

8.1. No Liens. Grantor shall keep the Property free from any liens, including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

8.2. Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction or by mutual written agreement of the parties.

8.3. Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

9. Transfer of Easement. This Conservation Easement is transferable by Grantee, but Grantee may assign this Conservation Easement only to another entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 (or any successor provision then applicable) or the laws of the United States. Grantee shall require the assignee to record the assignment in the official records of Los Angeles County, State of California.

10. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer.

11. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other parties shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor: City of Whittier
13230 East Penn Street
Whittier, California 90602
Attention: City Manager

To Grantee: Puente Hills Landfill Native Habitat Preservation Authority
7702 Washington Ave, Suite C
Whittier, CA 90602
Attention: Andrea Gullo, Executive Director

or to such other address as Grantor or Grantee may designate by written notice to the other parties. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

12. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements
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and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Los Angeles County, State of California.

13. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to affect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement Deed, such action shall not affect the remainder of this Conservation Easement Deed. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement Deed to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 12.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement Deed shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

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(i) Recording. Grantee shall record this Conservation Easement Deed in the official records of Los Angeles County, State of California, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement Deed the day and year first above written.

GRANTOR:

GRANTEE:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

EXHIBIT A