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October 5, 2011

VIA EMAIL AND U.S. MAIL
(jadams@cityofwhittier.org)

Members of the Whittier City Council
c/o Jeff Adams
Community Development Department
CITY OF WHITTIER
13230 Penn Street
Whittier, California 90602

SUBJECT: Supplemental Comments on the Revised Draft EIR for the Whittier Main Oil Field Development Project on behalf of Open Space Legal Defense Fund (OSLDF)

Dear Members of the City Council:

The public comment period for the Revised DEIR for the Whittier Main Oil Field Development Project ("Project") was from June 6, 2011 through July 21, 2011. Five days following the close of the public comment period, the City Council heard two important reports relating to the Project at its July 26, 2011 Council Meeting. The reports were then posted on the City's website the following day. Although both of these reports dealt with a land use consistency issue which should have been addressed in the Revised Draft Environmental Impact Report (Revised DEIR) -- i.e. the Project's consistency with Proposition A -- neither of these reports were included in the environmental document, and the public was not afforded the opportunity to review or comment on these documents as part of the environmental process. The two reports are:

- "Review and Evaluation of the Proposed Whittier Oil and Gas Project For Consistency with Proposition A," prepared for the City of Whittier by Community Conservation Solutions, dated July 2011.
- "Legal Analysis of Whittier's Right to Extract Oil and Gas Resources Underlying Its Park and Open Space Properties in the Whittier Hills Consistent with Longstanding California Real Estate Law Principles and with Proposition A," prepared for the City of Whittier by Carlyle W. Hall, Jr., Akin Gump Strauss Hauer & Feld LLP, dated July 2011

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These two reports include important information, which were excluded from the Revised DEIR. The Akin Gump Strauss Hauer & Feld Report ("Akin Gump Report") reveals for the first time that much of the leased land is subject to conservation easements. The Community Conservation Solutions Report contains an analysis of the Project's consistency with Proposition A.

Because these reports were released after the close of the public comment period and without formal notice, responsible agencies and the public were improperly precluded from commenting on the analysis and revelations contained in these two reports. This is a violation of the California Environmental Quality Act ("CEQA"). We are therefore submitting this supplemental comment letter on the Revised DEIR and hereby requesting that this information be added to the Revised DEIR, and that the Revised DEIR be recirculated to allow for comment on this important information. We also request that this comment letter, and responses to these comments, be included in the Final EIR for the Whittier Oil Field Project, following recirculation.

Akin Gump Report Reveals For The First Time The Existence of Conservation Easements Over Much of the Lease Lands

The Akin Gump Report disclosed for the first time that much of the 1280 acres included in the Lease Agreement is subject to conservation easements that were a seller-specified precondition for the sale of the land. This important land use information is not included in the Revised DEIR. It was first revealed on page 4 of the Akins Gump Report, which states:

"Among the other acquisition-related documents, the City in 1995 concurrently executed and recorded certain restrictive covenants by which it agreed to limit use of the Subject Property. Under the restrictive covenant for the former Unocal property, Whittier agreed to restrict use of the acquisition are "in perpetuity exclusively for open space and recreational purposes," including hiking, biking and horseback riding. Any activity inconsistent with these purposes is prohibited. Under the restrictive covenant for the former Chevron property, Whittier agreed to restrict use "forever in a natural undeveloped and open space condition," "for wildlife habitat and habitat restoration purposes," and "to prevent any use" that would "impair or interfere with [the site's] conservation values." Permitted uses include hiking, biking and horseback riding. Any activities "inconsistent" with habitat conservation or the permitted uses are prohibited."

The Revised DEIR is fatally flawed because it fails to disclose the existence of conservation easements over most of the leased lands, or to analyze the Project's consistency with these restrictive covenants. The DEIR needs to include maps showing the location of lands covered by these and any other conservation easements or restrictive covenants for: (1) the leased lands, (2) the habitat preserve and (3) the wildlife corridor. The Revised DEIR also needs to describe the nature of the restrictions associated with conservation easements or restrictive covenants within each of these three areas. The Revised DEIR then must include an analysis of the Project's consistency with these important land use

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constraints. The Revised DEIR must be updated to include this important information and recirculated. In the absence of this information and associated analysis, the Revised DEIR is fatally flawed.

Clearly, the introduction of 60 new wells, oil and gas production, oil and gas pipelines, at least 40.44 acres of construction and grading impacts, expanded and paved roadways for oil operations, 180,000 cubic yards of cut, 31,000 cubic yards of fill and 149,000 cubic yards of soil export from the leased lands during phase 1, as well as the subsequent phases of oil drilling potentially allowed under the Lease Agreement, are uses that are inconsistent with the permitted uses under these conservation easements. The inconsistency of the proposed Project with existing land use covenants and easements must be identified as a Significant Unmitigated Impact in the Revised DEIR and the Revised DEIR must explain whether or not the Project is feasible, given these existing land use restrictions that run with the land.

OSLDF has recently obtained some of the documents related to the sale of the Chevron and Unocal properties. All of the documents related to the sale and associated land use restrictions for the parcels included in the lease agreement, should be included in appendices to the Revised DEIR. The Revised DEIR also needs to address any changes in parcel numbers within the area covered by the Lease Agreement, subsequent to the sale of the lands.

It is clear from the documents OSLDF has obtained, that the conservation easements/restrictive covenants were a condition of the original sale of the properties, separate and apart from the properties ultimate acquisition by the City using Proposition A funds. As shown in **Exhibit 1**, which includes documents related to the acquisition of the Unocal properties by the Trust for Public Land ("TPL"), which then transferred the land to the City:

- Union Oil Company of California ("UNOCAL") indicates in the Declaration of Restricted Use (Recorded Document 96-909633 filed June 10, 1996) that: "C. UNOCAL would not have sold the Subject Property to TPL but for *CITY's representations and covenants that the Subject Property would be used for a minimum of twenty-five (25) years exclusively for public open space and recreational purposes.*" Effectively until 2021.
- The City then indicates in the Declaration of Restricted Use (Recorded Document 96-909633 filed June 10, 1996) that: "E. The CITY intends to restrict use of the Subject Property in *perpetuity exclusively* for public open space and recreational purposes so as to benefit *this generation and future generations to come.*" (emphasis added)

Similarly, the Chevron property was acquired by TPL. It was then transferred, via the Mountains Recreation and Conservation Authority (MCRA) to the City of Whittier. In the documents related to the sale of the Chevron property (**Exhibit 2**) Chevron and the TPL agree to a conservation easement over the majority of the Chevron property. The City's acquisition of the property using Proposition A funds, also restricts use of land purchased with Proposition A funds:

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- Chevron and the TPL agreed in the Declaration and Easement Of Restricted Use (Recorded Document 95-2043168 filed December 26, 1995) that: “F. Grantor and Grantee desire that the conservation value of 600 acres of the Sale Property, more specifically described below and defined as a portion of the Restricted Property shall be *preserved and protected in perpetuity.*” (emphasis added)
- Chevron and the TPL agreed in the Declaration and Easement Of Restricted Use (Recorded Document 95-2043168 filed December 26, 1995) that: “G. Grantor intends to reserve the right to preserve, enhance and protect the conservation values of the Restricted Property in perpetuity by the grant of a conservation easement; granting such rights to the Service or other legal entity qualified under federal or state law to hold conservation easements.”
- Chevron and the TPL agreed in the Declaration and Easement Of Restricted Use (Recorded Document 95-2043168 filed December 26, 1995) that: “H. Grantee agrees to such reservation, as set forth herein in the Grant Deed conveying fee title to the Sale Property, recorded concurrently herewith, and to *honor the conservation values of the Restricted Property for the benefit of this generation and the generations to come.*” (emphasis added)
- Chevron and the TPL agreed in the Declaration and Easement Of Restricted Use (Recorded Document 95-2043168 filed December 26, 1995) that: “1. Purpose. It is the purpose of this Declaration and Easement of Restricted Use to place an easement over a portion of the Sale Property, defined herein below as the Conservation Easement Area, *which land will be retained forever in a natural, undeveloped open space condition (subject to those uses permitted in this Declaration) and for wildlife habitat and habitat restoration purposes and to prevent any use of the Conservation Easement Area that will impair or interfere with the conservation values of the Sale Property.* Subject to the uses specifically permitted in this Declaration, Grantor intends that this Declaration will limit the use of the Conservation Easement Area to activities consistent with the purpose stated above, including without limitation, those activities involving the preservation and enhancement of coastal state scrub habitat.” (emphasis added)

Both sellers (Chevron and Unocal) indicate that the placement of conservations easements on the lands was a condition of the sale of the properties. The City agreed to be bound by these conservation easements as part of its acquisition of the Unocal and Chevron properties. The City needs to explain why it is seeking to violate the Declaration of Restricted Uses, and the Revised DEIR needs to address whether or not the proposed Project or alternatives are feasible, given the deed restrictions and conservation easements, which were a condition of the sale of the land to the City.

California Civil Code § 815.1 defines conservation easement as any limitation in a deed or other instrument in the form of a restriction or condition which has been executed by the owner of the land subject to the easement for the purpose of which is to retain land predominantly in its natural, scenic or

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open space condition. CCP 815 et seq. is to be construed liberally and allows those who benefit to enforce the easement.

The restrictions placed upon the Chevron and Unocal properties were to benefit, "this generation and generations to come." Therefore, we expect the City of Whittier to honor its commitment to maintain these properties in its natural open space condition for this generation and generations to come, and comply with the terms and conditions clearly set forth in the Declaration of Restricted Use for the Unocal property and the Declaration and Easement of Restricted Use on the Chevron Property. To ignore and breach these deed restrictions and now lease the 1280 acres, the entirety of Chevron and Unocal properties, to Matrix which contains the deed restrictions that the City of Whittier committed to its citizens to maintain, is truly disingenuous. Further, for the City to continue this process, fully knowing these deed restrictions prohibit such activity, is appalling.

Failure to Address The Project's Consistency With Proposition A In The Revised DEIR

Despite the fact the responsible agencies, such as the Los Angeles County Parks and Open Space District commented on the need to address Proposition A consistency during the NOP period for the Revised DEIR, this important land use consistency analysis was not included in the Revised Draft EIR for the proposed Project, and responsible agencies and the public were thus not afforded the requisite 45-day opportunity to review and comment on either the Community Conservation Solutions or Akin Gump Reports regarding the Project's consistency with Proposition A. These two reports should have been included in the Revised DEIR.

In addition, despite the fact that the reports were presented and released after the close of the comment period on the Revised Draft EIR, both reports note that they are based on information contained in the outdated October 2010 Original DEIR, rather than the Revised DEIR (see page i of the Community Conservation Solutions Report and footnote 1 of the Akin Gump Report). The outdated October 2010 Draft EIR is for a version of the Project which is no longer under consideration and, as detailed in our comment letters on the Revised DEIR, the version of the Project analyzed in the Revised DEIR is substantially different from the "environmentally superior/preferred alternative" included in the Original DEIR. As discussed in the OSLDF comment letters on the Revised DEIR dated July 19 and July 20, 2011 from myself and Pareto Planning, the Revised DEIR admits to significantly more landform modification and area of disturbance than for the version of the proposed Project or "environmentally superior alternative" included in the Original DEIR. An updated version of these two report reflecting the Phase 1 Project under consideration, as well as the whole of the actions under the Lease Agreement, needs to be included in the Revised DEIR, and the Revised DEIR needs to be recirculated to allow for the requisite agency and public comment on the Proposition A land use consistency analysis.

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The City's Continued Failure To Abide By The Letter Or Spirit of CEQA

The City's covert release of these two reports five days after the close of the public comment period on the Revised DEIR highlights the fact that both the land use consistency analysis contained in the Revised DEIR, and the City's CEQA process to date, are fatally flawed. It can only be surmised that the City Council elected to veil the release of these two reports because of the public outrage and opposition displayed against this Project.

It is important to note that no public hearing on either of these two reports was held. The Community Conservation Solutions Report was hidden in the July 26, 2011 City Council agenda (see **Exhibit 3**) as Item 11C, a presentation, and simply described as "11.C Community Conservation Solutions Report." The agenda failed to disclose that this was a presentation of Community Conservation Solution's Proposition A Consistency Report relating to the Matrix/Whittier Hills Project, a highly controversial Project in the City. The agenda also failed to disclose that the Council would be receiving a presentation, that same evening, on the Akin Gump Report regarding Proposition A, as it relates to the proposed Project. Given the amount of controversy surrounding this Project, the fact that the City Council knowingly elected to bury the nature of these reports to the public in an agenda that clearly failed to indicate that the controversial mining project was going to be addressed, is simply one more example of the City's failure to comply with the letter of the law and spirit of CEQA by intentionally precluding public participation in this highly contentious Project.

Incorporation By Reference

The City has received a staggering number of comments on the Revised DEIR. OSLDF has obtained a number of the comment letters on the Revised DEIR, including comment letters from:

- The Los Angeles County Regional Park and Open Space District
- The California Department of Fish and Game
- The Air Quality Management District
- The Puente Hills Landfill Native Habitat Authority (Habitat Authority)
- The Wildlife Corridor Conservation Authority
- Whittier Hills Oil Watch (WHOW)
- Hills For Everyone (Shute Mihaly & Weinberger, LLP)
- The Sierra Club Los Angeles Chapter
- Friendly Hills Property Owners Association (FHPOA)
- Whittier Conservancy
- Whittier Hills Oil Watch

These comment letters identify a number of serious defects in the Revised DEIR that must be addressed in any recirculated Revised DEIR and the Final EIR for the Project. Since the City failed to adequately address the comments on the Original DEIR, or Notice of Preparations (NOPs), in the

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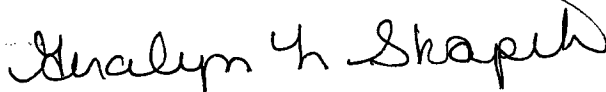
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Revised DEIR, we hereby incorporate by reference all of the comments received by the City on the Revised DEIR and request that the City provide a bona fide response to substantive issues raised on the Revised DEIR in both the recirculated and Final EIR. We also reserve the right to address any of the issues raised in comment letters on the Revised DEIR, the NOP for the Revised DEIR, the NOP for the Original DEIR, or comment letters on the Original DEIR, which are not adequately address in the FEIR, in any litigation regarding this Project, and hereby incorporate by reference all of the comment letters received to date on the Project EIR.

Very truly yours,

CLAREMONT LAND GROUP



GERALYN L. SKAPIK

GLS:mr

Enclosures:

Exhibits:

1. Unocal Property – Declaration of Restricted Use and Grant Deeds.
2. Chevron Property – Declaration of Easement of Restricted Use and Grand Deeds.
3. Whittier City Council Agenda for July 26, 2011.
4. California Civil Code § 815.1 and 816.

cc: VIA EMAIL

Kimberly Hall Barlow, Jones & Mayer, Counsel for City of Whittier (khh@jones-mayer.com)

Mr. Russ Guiney, Director of Parks and Recreation, Los Angeles County Regional Park and Open Space District (rguiney@parks.lacounty.gov)

Mr. Scott Kuhn, Office of County Counsel (skuhn@counsel.lacounty.gov)

Jordan T. Porter, Esq., Law Office of Eric A. Woosley, Counsel for Matrix Oil Corporation and Clayton Williams Energy, Inc. (office@zwlegal.com)

Los Angeles County Supervisor Gloria Molina (molina@bos.lacounty.gov)

Los Angeles County Supervisor Don Knabe (c/o Chief of Staff, Rick Velasquez, rvelasquez@lacbos.org)

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Ms. Laurie Collins, Esq., Mountains Recreation and Conservation Authority (collins@smmc.ca.gov)

Gabriel M.B. Ross, Esq., Shute, Mihaly & Weinberger LLP (ross@smwlaw.com)

Ms. Claire Schlotterbeck, Executive Director, Hills For Everyone (info@hillsforeveryone.org)

Board of Directors, Puente Hills Landfill Native Habitat Preservation Authority (c/o Andrea Gullo,
agullo@habitatauthority.org)

Ms. Joan Licari, Chair, The San Gabriel Valley Task Force, Angeles Chapter of the Sierra Club
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Mr. Eric Johnson, Chair, Puente-Chino Hills Task Force, Angeles Chapter of the Sierra Club
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Mr. Ken Corey, Asst. Field Supervisor for Inland Empire/Desert Office, U.S. Fish and Wildlife Service
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