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Via E-Mail and U.S. Mail

Jeff Adams, Community Development
Department City of Whittier
13230 Penn Street
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Re: Comments on the Revised Draft Environmental Impact Report for
Whittier Main Oil Field Development Project

Dear Mr. Adams:

This firm represents Hills for Everyone (“HFE”), and provides comments on the environmental review of the Whittier Main Oil Field Development Project (“Project”). The proposed Project analyzed in the RDEIR is not a “new” project but a combination of elements drawn from the previously proposed project analyzed in a draft environmental impact report (“DEIR”) last year. We therefore consider the present document, dated June 2011, to be a revised draft Environmental Impact Report (“RDEIR”). We submit this letter to state our position that the RDEIR does not comply with the requirements of the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines, for all of the reasons set forth below, as well as all of the reasons stated in our letter of December 6, 2010 commenting on the DEIR (“SMW DEIR letter”), which is attached as Exhibit A and by this reference incorporated herein in its entirety.

It is perplexing to us that the City took the time and energy to prepare a revised DEIR but failed to address its real inadequacies. The SMW DEIR letter raised numerous deficiencies in the project description, in the environmental impact analyses, and in alternatives analysis. The revised Project remains inadequate and subject to a number of the same deficiencies as its predecessor. It ignores most of the flawed impact analyses and makes half-hearted corrections to others. In addition, the Project demonstrates a disturbing disregard for the City of Whittier General Plan. The RDEIR papers over the

Project's fundamental conflict with the City's General Plan by pointing to mitigation measures purported to minimize Project-related impacts in the hopes that this will excuse the overarching inconsistency. In light of these fundamental CEQA violations, the Project may not be approved on the basis of this EIR.

BACKGROUND

HFE was formed 30 years ago with the specific mission to protect the unique, rare, and disappearing landscape in the Puente-Chino Hills. These hills lie at the juncture of Southern California's four most populous counties: Los Angeles, Orange, Riverside, and San Bernardino. HFE's first goal was the creation of Chino Hills State Park ("CHSP"). By designing the Park along ridgeline boundaries, HFE originated a design strategy that protected the watershed and the viewshed. In HFE's earliest history, its mission included opposing projects that damaged the evolving Park and supporting decisions that protected it.

While advocating for CHSP, HFE members educated elected officials about the value of open space in this highly urbanized region. A bipartisan and bicameral coalition of state legislators secured funds through five Park Bond Acts that HFE's volunteers worked to have passed. With over 30 separate acquisitions, the State and other agencies have spent over \$108 million to acquire nearly 14,500 acres, making it the most complicated and expensive state park in history. Since the Park lies within an hour's drive of over half the state's population, a wilderness experience is now available to people who might not otherwise be able to afford one. For their efforts, in 1997, the California Department of Parks and Recreation honored HFE with the DeWitt Award for "Extraordinary Achievement in the Establishment of the Chino Hills State Park."

The Puente Hills Landfill Native Habitat Preserve ("Preserve") is located at the eastern edge of Los Angeles County, bounded by the San Gabriel River on the west and the Chino Hills to the east. The Preserve encompasses approximately 3,860 acres managed as open space. The Preserve is an integral part of the Puente-Chino Hills Wildlife Corridor, an unbroken zone of natural habitat extending nearly 31 miles, of which the Chino Hills State Park is a part.

Like the DEIR before it, this RDEIR plays down the Project area's recognized high sensitivity and dramatically understates the importance of the Project site to the biodiversity of the region. The Preserve and multiple, adjacent, important conservation areas support biological resources that are significant on both a local and regional scale. Yet, the RDEIR again takes a blinkered approach to evaluating impacts on biological resources and fails to evaluate the overall biodiversity of the Preserve or to analyze the

Project's impact on biodiversity. The Preserve and the Puente-Chino Hills region have unique, irreplaceable natural resources with vibrant and diverse wildlife, which should have been evaluated with the utmost care.

With regard to land-use impacts, the RDEIR similarly misses the mark, failing to account for manifest violations of the City of Whittier's General Plan. The Project continues to be fatally inconsistent with multiple provisions of the City's General Plan. Furthermore, the Project's inconsistency with the General Plan results in the City's inability to make the necessary findings under zoning code requirements to grant the conditional use permit for the site.

CEQA requires that an EIR provide the analysis and detail about environmental impacts that is necessary to enable decision-makers to make intelligent decisions in light of the environmental consequences of their actions. See CEQA Guidelines § 15151; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. The EIR is also the "primary means" of ensuring that public agencies "take all action necessary to protect, rehabilitate, and enhance" the environment. *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 392. Thus, CEQA incorporates a substantive requirement that the lead agency adopt feasible mitigation measures or alternatives that can substantially lessen the project's significant environmental impacts. Pub. Resources Code § 21002; CEQA Guidelines § 15002(a)(3). Finally, the EIR is a "document of accountability," intended to demonstrate to the public that the agency has considered the environmental implications of its action. *Laurel Heights*, 47 Cal.3d at 392.

As detailed below, the RDEIR does not comply with CEQA's requirements or satisfy CEQA's objectives: (1) the RDEIR fails to accurately analyze the Project's consistency with the City's General Plan and Zoning Code; (2) the RDEIR fails to provide sufficient information about the Project's impacts to enable informed decision-making by the City; (3) the RDEIR fails to satisfy CEQA's substantive mitigation requirement; and (4) the RDEIR fails to demonstrate to the public that the City has fully grappled with the environmental implications the Project.

I. The Revised Project Remains Inconsistent with Applicable Plans and Ordinances and Therefore Cannot be Approved.

An inconsistency between a project and an applicable land use plan or regulation is a significant environmental impact under CEQA. The question of consistency between the Project and the applicable plans and ordinances plays two distinct roles in the environmental review and project approval process. First, under the California

Environmental Quality Act (“CEQA”), a conflict between a plan or ordinance and the Project is a significant impact that must be disclosed and analyzed in the EIR. See *Pocket Protectors v. City of Sacramento* (2005) 124 Cal. App. 4th 903, 929-36. The RDEIR acknowledges this by establishing unequivocally that the Project would have a significant impact if it would “[c]onflict with any applicable land use plan, policy or regulation.” RDEIR at 4.11-20. The EIR’s conclusions regarding these impacts, like those for any other impact, must be supported by substantial evidence.

Second, under separate provisions of state and local law, the Project may not be approved in the face of such an inconsistency. As noted in the RDEIR, the Project requires a development review permit and a conditional use permit. RDEIR at 1-5. State law clearly requires these approvals to be consistent with the City’s General Plan. “The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 570. Specifically, State law bars the grant of a conditional use permit for an activity that would be inconsistent with a general plan. See *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal. App. 3d 1176, 1184. As discussed below and in our previous comment letters, the Project is inconsistent with the City’s General Plan in a number of ways. See Exhibit A, SMW DEIR letter at 3 through 5. The Project is also inconsistent with the City’s Zoning Ordinance. *Id.* at 5 and 6. Thus, the City cannot legally grant the conditional use permit for this Project or any iteration of the Project if it is to be located within the Preserve.

Furthermore, the City’s own code expressly bars the City from granting any of the required approvals for this Project unless they are consistent with the General Plan and the Zoning Code. For example, the conditional use permit needed for the Project may not be granted unless “the proposed use will...be consistent with the general plan...and the Whittier zoning regulations.” See City of Whittier Zoning Code §18.52.040 (B). Thus, the City may not approve any permit that would facilitate uses inconsistent with general plan or zoning requirements. In short, both state and local law bar the City from granting the required approvals for this Project unless it is consistent with the General Plan.

As explained in the SMW DEIR letter and demonstrated below, the Project is in many ways inconsistent with the applicable plans and ordinances, and the RDEIR’s analysis of these inconsistencies is deeply inadequate. It is important to keep in mind the distinction between these flaws. The CEQA issues may potentially be resolved if, for example, the City Council recognizes that the conflicts constitute a significant and unavoidable impact and finds, based on substantial evidence, that the Project’s benefits outweigh that impact. See Public Resources Code § 21081. Such a finding, however, could do nothing to overcome the actual conflicts between the Project and the plans.

Finally, it is important to note that the permanent protection of important open space areas has become an urgent need throughout the state. California statutory and case law have long recognized open space as a valuable environmental resource. Accordingly, the California Legislature has declared that “open-space land is a limited and valuable resource which must be conserved wherever possible.” Gov’t Code § 65562(a). Nearly thirty years ago the California Supreme Court recognized that “[t]he elimination of open space in California is a melancholy aspect of the unprecedented population increase which has characterized our state” *Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek*, 4 Cal.3d 633, 638 (1971), cert. denied, 404 U.S. 878 (1971). Of course, the problem has become ever more serious since the Court’s prescient statement.

The RDEIR acknowledges many of the inconsistencies described in this letter, but concludes that the Project is consistent with others and finds all of them to have less than significant environmental impacts. The lack of substantial evidence supporting these significance determinations renders the EIR inadequate and makes certifying the EIR and approving the Project inappropriate. At the same time, no amount of CEQA analysis or disclosure could cure the obvious and acknowledged conflicts between the proposed Project and the City’s plans and ordinances. The Project is not consistent with the City’s General Plan and does not meet the requirements of the City’s Ordinances. State and local law thus clearly forbids the City from approving it.

In light of these fatal deficiencies, we respectfully request that the City take no action on this Project until an EIR is prepared that complies with CEQA and until the Project complies with all state and local laws. More importantly however, this inconsistency means that the City cannot approve the Project without first amending both the General Plan designation and zoning for the site.

B. The RDEIR’s Analysis of the Project’s Incompatibility with the City’s Zoning Code Is Inadequate

The revised Project, like the project contemplated before it, is inconsistent with the zoning for the site. See SMW DEIR letter, attached as Exhibit A, at 5 and 6. As the RDEIR acknowledges, the Project site is zoned as Open Space (“OS”) and the “reintroduction of oil exploration to the Project Site would not be permitted by right.” RDEIR at 4.11-43. The Zoning Code explicitly prohibits industrial uses within the OS zone. Zoning Code §18.09.060. The proposed oil and gas production facilities are plainly industrial uses and are thus banned in the OS zone. Elsewhere, the Zoning Code purports to allow oil and gas production in all zones by conditional use permit. Zoning Code §18.52.030(A). These two provisions of the Zoning Code are clearly in conflict.

When such a conflict arises, the more specific provision, not the more general one, always applies. The particular requirements for the OS zone are more specific than the general provision for oil drilling citywide. Thus, the OS zone rules apply, and the Zoning Code therefore does not allow the permit required for the Project.

As explained in the SMW DEIR letter, this legal conclusion is grounded in common sense: it is only reasonable that the Zoning Code bars oil and gas development in a habitat preserve and a zone devoted to maintaining open space. Any other reading of the Code would undermine the very purposes of the Preserve and the OS designation. Thus, the City cannot approve this CUP.

The RDEIR's analysis fails to identify the Project's inconsistencies with the zoning code. As it did with its analysis of the Project's consistency with the General Plan, the RDEIR concludes that measures identified to mitigate the Project's environmental impacts would reduce impacts to less-than-significant levels, thus excusing the Project's inconsistency with the zoning for the site. RDEIR at 4.11-50. Inasmuch as the Project would reintroduce oil drilling, clearly an industrial use, into an area zoned as Open Space, the Project is inconsistent with the Zoning Code. Consequently, no amount of mitigation to offset significant impacts related to visual resources, biological resources, noise and air quality will change the Project's inconsistency with the Code.

C. There is No Evidence to Support the Findings Necessary to Proceed with a Conditional Use Permit, Including the Finding of General Plan Consistency.

Notwithstanding the fact that the proposed sites location within an established Preserve is entirely inappropriate for oil drilling activities, the City also would not be able to make the findings necessary to approve the conditional use permit for the Project. In order to issue a conditional use permit for the Project, the City must make the following findings: 1) the site is adequate in size, shape and topography; 2) the site has sufficient access to streets; 3) the use will not *unreasonably interfere with the use, possession and enjoyment of surrounding adjacent properties*; 4) the use will be *compatible with the permitted uses of surrounding and adjacent properties*; 5) the use is *consistent with the General Plan and any applicable specific plan and with the Whittier zoning regulations*. Zoning Code §18.52.040; emphasis added.

As explained in the SMW DEIR letter, the Project is inconsistent with the site's General Plan. Further, the Project is incompatible with and would interfere with the use of adjacent properties because it would result in: (1) significant and unavoidable localized

air quality impacts; (2) significant and unavoidable noise and aesthetic impacts to nearby residences as a result of the Project's drilling activities; and (3) significant and unavoidable impacts to the community's recreational resources. See RDEIR at ES-22 to ES-24. As the RDEIR makes clear, the Project would result in significant, unmitigated impacts to adjacent properties from more than three years of construction emissions; increased vibration and ambient noise in violation of established standards, safety risks to residents and schools associated with accidental releases of pollutants, loss of recreational uses in the immediate vicinity, and degradation of views. *Id.* Therefore, because the Project does not meet the Zoning Code standards for issuance of conditional use permits, it cannot be lawfully approved.

II. The RDEIR Fails to Provide an Adequate Description of the Project Setting.

The RDEIR is flawed from the outset because it continues to rest on an incomplete description of the Project's environmental setting. Despite comments from HFE and the Habitat Authority regarding these same failings in the previous DEIR, the RDEIR continues to understate the Project area's recognized high sensitivity and de-emphasizes the importance of the Project site to the biodiversity of the region. The RDEIR acknowledges that "loss and degradation of habitats at the Project Site could be expected to have greater adverse effects upon ecological processes and native wildlife populations than would occur in an area with comparable natural communities that does not occupy such a sensitive location within a natural Preserve." RDEIR at 4.2-52. However, the document then goes on to view the Project's impacts narrowly and fails to calculate the overall biodiversity of the Preserve. The RDEIR's artificial focus on direct habitat removal results in a complete failure to analyze the broader impact of loss of biodiversity.

Second, the RDEIR fails to correct failures related to incomplete and inaccurate background data. For example, the RDEIR ignores comments on the DEIR that the surveys to establish baseline conditions were restricted to the immediate area surrounding the proposed facilities (i.e., direct impacts) and relies on the same inadequate survey data. See RDEIR at 4.2-1 through 4.2-3. Thus, the RDEIR's narrow description of the sensitive species and habitats present in the Project area results in an incomplete description of the sensitive environmental setting of the Project.

Finally, the environmental setting ignores certain species that are likely to occur on site, such as non-vascular plants and invertebrates, both important to biodiversity. The RDEIR fails to evaluate the potential occurrence of non-vascular plants altogether and fails to disclose habitat for four species of butterfly listed in the Resource Management Plan ("RMP") for the Preserve. *Id.* at 12 and 13. The latter oversight is inexcusable given evidence in the record of the presence of habitat and individuals of these butterfly species

on the Project site. (*Compare* RMP at Appendix, pages 150-151 (documented observations of butterfly species) with RDEIR at Tables 4.2-2 (no mention of butterfly species. These omissions skew the RDEIR's analysis of Project impacts and, thus, undercut the validity of the entire document.

III. The DEIR Fails to Analyze and Mitigate the Project's Significant Environmental Impacts.

The fundamental purpose of an EIR is to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 6 Cal.4th 1112, 1123. To do so, an EIR must contain facts and analysis, not merely an agency's conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. In order to fulfill CEQA's informational goal, an EIR must lay bare a Project's significant environmental impacts. In many instances, as detailed below, the RDEIR fails to adequately disclose and analyze the Project's impacts, particularly in the areas of biological resources and air quality.

As documented below, the Project RDEIR fails to adequately analyze or support with substantial evidence its conclusions regarding the Project's significant environmental impacts. These deficiencies clearly demonstrate the inadequacy of the RDEIR under CEQA.

A. The RDEIR's Analysis and Mitigation of Significant Impacts to Biological Resources Are Inadequate.

The proposed Project would result in industrial development within a nature preserve, resulting in locally and regionally significant impacts to several sensitive species including the federally endangered California gnatcatcher and a long list of other special status species, including several species designated as California Special Animals by the California Department of Fish and Game ("CDFG"). Given the local and regional significance of the site's plant and wildlife communities together with the fact that numerous members of the public commented on the inadequacy of the original DEIR's analysis of biological resources, one would expect that the RDEIR would have treated this issue comprehensively. Yet the analysis remains as technically flawed and legally deficient as the original DEIR.

In fact, the RDEIR's so-called analysis of biological impacts achieves a result exactly opposite from what CEQA requires. Under CEQA, decisionmakers and the public are to be given sufficient information about impacts and mitigation to come to

their own judgments and decisions. *See* Pub. Res. Code 21061. This RDEIR's strategy is to withhold information and to encourage the public and decisionmakers to trust that the applicant will ultimately mitigate the Project's impacts. The Project's critical discussion of biological impacts must explain exactly what will happen on the oil drilling site and the surrounding ecosystem if the Project goes forward. *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568 (“[T]he EIR must contain facts and analysis, not the agency's bare conclusions . . .”). The RDEIR must offer some specific information about the consequences of this Project. It cannot, as the RDEIR does over and over again, merely acknowledge that the Project will have consequences and then assert that those consequences will be mitigated without providing evidentiary support. Thus, this document, like its predecessor remains inadequate under CEQA.

1. There Is No Evidence That the Impacts on Sensitive Species Will Be Reduced to a Less Than Significant Level.

The RDEIR should include a comprehensive analysis of impacts to animal species designated as “California Special Animals” (“CSAs”). The CDFG designates all species in the California Natural Diversity Data Base it is interested in tracking, regardless of their legal or protection status. *See* <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/spanimals.pdf> and RDEIR at 4.2-19. The species on this list are also referred to as “species at risk” or “special status species.” *Id.* CDFG considers the taxa on this list to be those of greatest conservation need. *Id.* Therefore, by all counts, CSA species should be explicitly included in an analysis of the Project's impacts on biological resources.

The RDEIR, like the DEIR before it, identifies a number of CSAs likely to occur on the Project site and in the immediate vicinity. RDEIR at Table 4.2-2. Yet, the RDEIR fails to analyze or mitigate impacts to these species. The RDEIR summarily concludes that these species are widespread in the Puente-Chino Hills and that any potentially adverse, Project-related impacts would be less than significant. RDEIR at 4.2-44. However, the RDEIR provides no evidence or documentation to support its conclusion. Accordingly, the RDEIR's analysis of impacts to CSAs is not adequate and mitigation measure BIO-1 is not sufficient to reduce impact BIO-1 to a less than significant level.

Furthermore, the RDEIR fails to adequately analyze and mitigate impacts to several California Species of Special Concern that the document acknowledges are found on the site. RDEIR at 4.2-22. For example, the Project will impact yellow-breasted chat, a California Species of Special Concern that largely utilizes riparian habitat. RDEIR at 4.2-8. The RDEIR concludes that mitigation measure BIO-1a, which addresses mitigation of native upland habitat rather than riparian habitat, is sufficient to mitigate

impacts to this species as well. RDEIR at 4.2-44. Impacts to the yellow-breasted chat and other riparian species should be included in mitigation measure BIO-2, which addresses impacts to riparian habitat. RDEIR at 4.2-28. Here, the RDEIR acknowledges significant noise impacts to species using riparian habitat (including the yellow-breasted chat), but understates these impacts by labeling them “temporary.” RDEIR at 4.2-48. Given that the Project is scheduled to operate for approximately 25 years, the loss of this habitat can hardly be termed “temporary.” For this reason, the RDEIR’s proposed 1:1 mitigation for the so-called “temporary” loss of riparian habitat is not sufficient.

The RDEIR also fails to adequately analyze and mitigate impacts related to loss of foraging and roosting habitat for sensitive bat species, such as pallid bat and pocketed free-tailed bat, which would contribute to these species’ decline. RDEIR at 4.2-18. Despite the fact that the document acknowledges the likely presence of these species, the RDEIR fails to include surveys of the bat population on and adjacent to the Project site, and fails to quantify the impacts to the bats from habitat removal and other disturbances. RDEIR at 4.2-18 and 4.2-44.

Finally, the RDEIR continues to ignore the Project’s impacts to raptors and migratory birds during the non-breeding season. The document limits its analysis to direct disturbance by construction activity to nesting activities during breeding season. RDEIR at 4.2-53. As evidenced by objectives in the Resource Management Plan (“RMP”) for the Preserve, the protection of both nesting and foraging habitat is critical to sustain raptors and migratory birds. *See* RMP Objective BIO-3.4 (“Protect and maintain nesting and foraging habitat for sensitive, threatened, or endangered raptor species.”); RDEIR at 4.2-38. The RDEIR does nothing to protect these species during the non-breeding season and simply ignores impacts related to loss of foraging and roosting habitat caused by the day-to-day operations of an oil drilling operation. This incomplete, ineffective mitigation fails to comply with CEQA. CEQA Guidelines § 15126.4(a)(1).

2. There Is No Evidence That the Impacts on Core Habitat and Wildlife Nursery Sites Will Be Reduced to a Less Than Significant Level.

Perhaps most egregiously, the RDEIR understates potential impacts to core habitat and wildlife nursery sites within the Preserve. The RDEIR acknowledges the potential for significant impacts to core habitat and specifies that because “land use policies in the Whittier Hills and in the wider Chino-Puente hills region have been designed and implemented with an understanding that the lands that include the Project Site would be restored, maintained, and preserved...,” loss and degradation of habitat in the Project area would have greater effects than in areas not occupying a nature preserve. RDEIR at 4.2-

52. Yet, as described below, the RDEIR attempts to downplay the adverse effects of placing an oil rig operation within a nature preserve for the next 25 years.

Despite the fact that the Project would operate oil drilling operations at a site “known to provide some of the best habitat in the Preserve for bobcat” and characterized as a native wildlife nursery site for bobcat, the RDEIR concludes that impacts to this keystone species would be less than significant. RDEIR at 4.2-22 and 23, 4.2-35 and 4.2-53. Again, the RDEIR provides no evidence to support this conclusion. To the contrary, the RDEIR itself provides evidence that impacts would be significant. For example, the RDEIR concedes that “during the 30-year life of the Project, levels of noise, light, human presence, and vehicle traffic would increase in *all parts* of the Project Site, including areas that serve as nursery sites and that have been purposefully set aside for the purpose of conservation of natural communities and their constituent species.” RDEIR at 4.2-53; emphasis added. Yet, the document fails to analyze the impacts that these increases in operational noise and other disturbances would have on bobcat and other mammals. *See* RDEIR at 4.2-20 (making no mention of noise impacts on mammals).

Instead, the RDEIR rationalizes its omissions by asserting that former oil operations that took place “for decades” elsewhere in the vicinity resulted in no significant, long-term, adverse effects on local wildlife populations. RDEIR at 4.2-53. The RDEIR again provides no documentation or evidentiary support for this statement, but relies on it to conclude that the Project’s impacts on bobcats and other wildlife would be less than significant. RDEIR at 4.2-53. Even if other projects have been implemented without adverse effects, the Project being evaluated in this RDEIR is the Project proposed and not some other project on a different site. Moreover, the baseline condition for the amount and quality of natural habitat now available is likely to be greatly changed from conditions 20 to 30 years ago so that impacts from other projects that took place decades ago are completely irrelevant to this Project.

In addition, the RDEIR continues to ignore acknowledged “residual” effects to sensitive wildlife species and federally protected riparian habitat, including: “impacts to preserved habitats that lie outside of limits of disturbance from “edge effects” that cannot be completely eliminated through mitigation,” “temporal losses that would occur before the restoration efforts provide functioning habitat” and “a compromised capacity to rebound from disruptive processes” due to an ecological system that is already under stress from surrounding intensive development. RDEIR at 4.2-48 and 4.2-50. The RDEIR, like its predecessor, fails to describe and quantify these effects and then concludes, without any evidence, that these impacts would not be significant.

3. There Is No Evidence That the Impacts on Wildlife Movement Will Be Reduced to a Less Than Significant Level.

The RDEIR presents Project-related impacts on wildlife movement as being mainly related to (1) changes in movement through the Project Site due to increased noise, vibration, traffic and human presence and (2) increased mortality of wildlife due to vehicle strikes. RDEIR at 4.2-54 and 4.2-55. The RDEIR acknowledges the importance of preserving wildlife movement and avoiding habitat fragmentation. RDEIR at 4.2-22.

As in the DEIR, the mitigation measures identified here are a list of conventional measures such as installing sound walls, shielding lights, and avoiding direct impacts to nesting birds. RDEIR at 4.2-56-60. These measures fall far short of mitigation for the loss of habitat used to link this area to other crucial wildlands away from human disturbance. The RDEIR, however, claims that these mitigation measures would reduce the Project's "significant adverse impacts" on movement corridors to the "maximum amount feasible." RDEIR at 4.2-56. This assertion, even if it were true, does not support the ultimate conclusion that the Project would have less than significant impacts on such corridors.

As we commented previously, the RDEIR should have considered mitigation that would create habitat linkages and opportunities for wildlife movement elsewhere. For example, the RMP makes specific recommendations for wildlife corridor maintenance. These include construction of a wildlife overpass (a vegetated wildlife bridge) over Colima Road to utilize the steep slopes on either side. RDEIR at 2.2-27. The RDEIR ignores these recommendations. Feasible mitigation to reduce the significant impact should include the RMP's recommendations, as well as establishment of new core habitat to offset permanent impacts to core habitat and key habitat linkages. Until the EIR identifies and analyzes such measures, it will remain inadequate.

B. The RDEIR's Analysis and Mitigation of Greenhouse Gas Emissions is Inadequate

Although the RDEIR acknowledges that the proposed Project would result in significant unavoidable impacts associated with greenhouse gas emissions and global climate change (at ES-23), the original document's failure to account for all sources of Project-related GHG emissions and reliance on insufficient mitigation are perpetuated in the RDEIR.

First, the RDEIR fails to include black carbon in its analysis of GHG emissions. Black carbon, a component of soot, is produced by incomplete combustion and is a

significant contributor to global warming. As explained in the SMW DEIR letter, black carbon is estimated to be the second greatest contributor to global warming behind carbon dioxide. Diesel combustion is the main source of black carbon. Construction and operation of the Project will require the use of diesel powered trucks and equipment and will result in exceedances of particulate matter standards. RDEIR at ES-22 and ES-23. The Project will result in significant black carbon emissions. Yet, the RDEIR ignores this contributor to climate change when evaluating GHG emissions. Without an evaluation of black carbon emissions, this EIR remains legally inadequate.

Second, despite our detailed comments regarding the DEIR's failure with regard to mitigating Project-related GHG emissions, the RDEIR does little to remedy that failure. The measures listed in Mitigation Measure AQ-4 are vague, insubstantial, and non-binding, and thus cannot be relied on to mitigate Project impacts. Measures relied upon to mitigate impacts must be "fully enforceable" through permit conditions, agreements, or other legally binding instruments. Pub. Res. Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2). Similarly, they must actually be implemented, not merely adopted and then disregarded, and thus the mitigation must provide assurance that such implementation will in fact occur. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1186-87; *Fed'n of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1261. The greenhouse gas-related "mitigation measure" does not meet this standard.

The chief failure of the RDEIR GHG analysis is that it largely defers mitigation of GHG emissions. The RDEIR states that "mitigation measures could include a wide variety of measures, from onsite increased efficiency to offsite programs implemented in the community," RDEIR at 4.1-41. It goes on to list potential onsite and offsite measures, such as reduced facility water consumption, waste generation, and material use; recycling to the maximum extent feasible; using alternative fuels; sponsoring retrofitting of diesel buses with hybrid engines and methane-capture technology projects. *Id.* Yet, the RDEIR does not commit to any of the potential methods for emission reduction.

The only measure included to address admittedly significant and unavoidable impacts calls for the implementation of an unspecified program to quantify and reduce greenhouse gas emissions at some future date. To make matters worse, the measure is non-committal. It only commits to annual monitoring of emissions with deferred implementation of reduction measures despite the fact that the RDEIR acknowledges that Project-related emissions will exceed Air District thresholds. RDEIR at 4.1-42

In addition, the RDEIR provides no evidentiary support that the proposed “measures” would effectively reduce GHG emissions. For example, the document calls for the Project to incorporate green electrical power or alternative fuels that “could” offset GHG emissions. *Id.* Aside from the fact that the measure clearly indicates that it may or may not be effective, the document’s bare-bones description of these alternative energy options does not allow decision makers and the public to evaluate the potential for their implementation or to determine whether the measures would in fact reduce GHG emissions, let alone to determine what quantity of emissions they would eliminate. A conclusion that a measure will be effective in mitigating an impact must be supported by substantial evidence. *Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1115-18; see also *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal. App. 3d 61, 79 (measures must not be so vague that it is impossible to gauge their effectiveness). In the absence of such evidence, the measures identified here are plainly inadequate.

Moreover, the RDEIR fails to provide a quantitative estimate of emission reductions. Instead, it simply concludes that “A combination of these mitigation measures *could* reduce the GHG emissions to below the SCAQMD threshold of 10,000 tons per year. However, the ability to implement some of these measures is uncertain; therefore, the impacts would still be potentially significant and unmitigable.” RDEIR at 4.1-43. The RDEIR must either generate an emission reduction estimate or explain, based on substantial evidence, why doing so would be infeasible. See *Berkeley Keep Jets Over the Bay vs. Bd. of Port Comm’rs* (2001) 91 Cal. App. 4th at 1370-71; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal. App. 3d 421, 430. Without that estimate, the public and decision maker cannot determine the extent to which the proposed measure in fact would reduce emissions. Unless and until the EIR develops a concrete mitigation plan, this environmental review will remain inadequate.

C. The RDEIR Provides No Evidence That Impacts Related to Trenching for Additional Firewater Supplies Would Be Less Than Significant.

The RDEIR identifies potential impacts to biological resources resulting from implementation of mitigation measures to reduce Project-related impacts. RDEIR at 4.2-62. CEQA requires that an EIR analyze the effects of such impacts. Specifically, “if a mitigation measure would cause one or more significant effects in addition to those that would be caused by the Project as proposed” the effects must be analyzed. CEQA Guidelines §15126.4(a)(1)(D). This RDEIR provides no such analysis and provides little information about the mitigation to be implemented.

The document states only that trenching across an area of the Preserve would be required to supply additional firewater supplies. RDEIR at 4.2-62. It provides no information on the location of the trenching, the amount of disturbance, or the length of time that such construction would take place. *Id.* Instead, it concludes that the trenching will be minimal and will not increase the severity of Project's impacts and that no additional analysis or mitigation is required. *Id.* In direct violation of CEQA, the RDEIR's conclusion that this required mitigation measure would not result in additional impacts is wholly unsupported by evidence or analysis. *Kings County*, 221 Cal.App.3d at 692.

D. The RDEIR Provides Insufficient Analysis and Mitigation of the Project's Cumulative Impacts

Not surprisingly, the RDEIR fails to correct the DEIR's failures with regard to analysis of cumulative impacts. For example, the RDEIR fails to provide any meaningful discussion of impacts to sensitive habitats resulting from past, present, and probable future projects. The RDEIR acknowledges that increased noise from Project-related oil production activities would result in cumulatively considerable impacts on biological resources. RDEIR at 4.2-63. However, absent any evidence, the EIR concludes that the Project would not make a cumulatively considerable contribution to significant cumulative impacts. *See* RDEIR Table ES-2 at ES22 through 24 (no mention of significant unavoidable cumulative impacts).

The RDEIR identifies potentially significant cumulative impacts to sensitive species and the ecological systems within the Preserve, stating that the Preserve is particularly vulnerable to stresses from cumulative conditions because it is an "already stressed system." RDEIR at 4.2-65. It also acknowledges potentially significant cumulative impacts to wildlife movement. *Id.* Yet, the mitigation proposed for this significant cumulative impact amounts to nothing more than a promise that Matrix's Sycamore Canyon operations comply with existing law. RDEIR at 4.2-65. This approach fails to comply with CEQA on two fronts. First, the RDEIR provides no quantitative evidence that compliance with the City's Noise Ordinance would ensure that either project-level or cumulative noise impacts would be less than significant. Without substantial evidence supporting the conclusion that mitigation would be effective, the EIR remains inadequate.

Second, the RDEIR concludes that if the Project and the other contributing projects each mitigate their individual impacts on sensitive wildlife and habitat, there would result no cumulative impacts. The EIR in essence reasons that a less than significant project-level impact never makes a cumulatively considerable contribution to

a cumulative impact. As explained in the SMW DEIR letter, this approach to cumulative analysis is a plain violation of CEQA. An EIR may not conclude that a project will not contribute to cumulative impacts simply because it has a less than significant impact on a project level. See *Kings County*, 221 Cal.App.3d at 720-21. The purpose of analyzing cumulative impacts is to determine whether a collection of less than significant impacts may combine to be cumulatively considerable.

Moreover, the mitigation measures for identified cumulative impacts on biological resources only address noise-related impacts. Cumulative impacts related to increased human activity, increased risk of fire, and loss of habitat are not addressed.

The RDEIR's analysis of cumulative impacts related to climate change is so minimal as to be meaningless. The entire analysis consists of the following two sentences: "Emissions of GHG would contribute to global GHG emissions. Since they would be significant, cumulative impacts could also be significant." RDEIR at 4.1-47. The RDEIR's dismissive approach to cumulative impacts on climate change are especially troubling given the grave threats posed by the cumulative impact of additional new sources of emissions into an environment where deep reductions from existing emission levels are necessary to avert the worst consequences of global warming. See *Communities for Better Env't v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 120 ("[T]he greater the existing environmental problems are, the lower the threshold for treating a project's contribution to cumulative impacts as significant."); see also *Center for Biological Diversity v. National Highway Traffic Safety Administration* (9th Cir. 2007) 508 F.3d 508, 550 ("[W]e cannot afford to ignore even modest contributions to global warming.").

In approving the Project, the City is likely allowing ongoing noise pollution resulting in significant cumulative impacts to the Preserve and surrounding wildlands for the next 25 years – but under the "trust us" approach favored by the EIR nobody would know the severity of the impacts until after Project approval. Furthermore, the RDEIR provides no information at all on the Project's potential cumulative impacts related to GHG emissions. In order to assess impacts intelligently, the City Council must know what contribution its approval of the Project would make to environmental impacts over the long-term

E. The RDEIR Does Not Consider an Reasonable Range of Alternatives

Under CEQA, an EIR must analyze a reasonable range of alternatives to the proposed project; a reasonable alternative is one that would feasibly attain most of the project's basic objectives while avoiding or substantially lessening the project's

significant impacts. See Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126.6(a); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal. App. 3d 433, 443-45. The RDEIR's alternatives analysis fails to meet this standard on two counts: it fails to analyze a reasonable range of alternatives that could significantly reduce the Project's impacts and prematurely dismisses the one alternative proposed that may reduce impacts. Moreover, it fails to accurately identify the environmentally superior alternative, as CEQA requires. CEQA Guidelines § 15126.6(e)(2)

First, the RDEIR still fails to provide a reasonable range of alternatives that would avoid or lessen the significant impacts of the Project. The DEIR previously presented two alternatives, neither of which reduced impacts to the Preserve. The RDEIR offers only one additional alternative: the Savage Canyon Landfill Alternative ("Landfill Alternative"). The RDEIR's screening criteria for alternative drilling sites excludes other drilling sites outside the Preserve because they are not a "sufficient distance from populations." RDEIR at 5-6. However, the rationale for excluding such sites is suspect given that the proposed Project is located within 1000 feet of homes, schools, churches and recreational activities. If the proposed site is not excluded from consideration due to its proximity to existing development, other potential drilling sites should also be considered.

Similarly, the RDEIR excludes the North Site Alternative despite the fact that this alternative would reduce impacts to biological resources in the Preserve. RDEIR at 5-11. The RDEIR concludes that increased aesthetic impacts and closer proximity to residences and recreational areas "are considered to be greater than the advantages to biology." *Id.* As is characteristic of the RDEIR as a whole, the document provides no evidence to support this conclusion. Given the significant impacts proposed to this important wildlife Preserve, the EIR is obliged to analyze this feasible alternative that could avoid or substantially lessen biological resource impacts.

Second, while the RDEIR acknowledges that the Landfill Alternative would provide significantly reduced environmental impacts related to biology, public safety, noise, air quality and odors; it prematurely dismisses that alternative without providing evidentiary support for its conclusion. The RDEIR claims that the Landfill Alternative would result in a reduction in the amount of oil that could be recovered, thus preventing the alternative from achieving *all* of the Project objectives. RDEIR at 6-57. However, the fact that the alternative would not achieve *all* of the objectives is not a sufficient basis for rejecting an alternative. CEQA does not provide that all of the applicant's objectives must be met. Instead it specifies that the alternatives analysis describe a "a reasonable range of alternatives...which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any significant effects..." CEQA

Guidelines §15126.6(a). Here, the Landfill Alternative would attain all of the objectives save Matrix' objective of reaping the largest profit.

The fact that Matrix cannot achieve the same economic objective from developing the Savage Canyon Landfill site is not determinative. The issue is not whether the alternative is less profitable than the Project as proposed, but whether the reduced profitability of the alternative is “ ‘sufficiently severe as to render it impractical to proceed with the project.’ *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437, 1461-62, 70 Cal. Rptr. 3d 59, 81 (Cal. Ct. App. 2007).

The RDEIR also dismisses the Landfill Alternative by claiming that the drilling at this location would require “significant, time-consuming amendments to existing state Landfill permits, which would create land use impacts.” Such impacts are not legally sufficient reasons to dismiss an alternative. Because, as discussed below, the Landfill Alternative is environmentally superior to the proposed Project and would meet most of the Project objectives, it may only be dismissed if it is infeasible. The need for a permit or other planning approvals does not establish an alternative's infeasibility. See *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1459.

Under CEQA, an agency may not approve a proposed project if a feasible alternative exists that would meet most of the project's objectives and would diminish or avoid its significant environmental impacts. Pub. Res. Code § 21002; *Kings County Farm Bureau*, 221 Cal.App.3d at 731. Given the extensive environmental impacts this Project will have, the consideration of alternatives will not be complete until an EIR presents decision-makers and the public with a rigorous, good-faith assessment of options that reduce the environmental consequences of the Project.

The EIR further fails to properly identify an environmentally superior alternative, labeling the proposed Project as such even though the Landfill Alternative is, by the EIR's own analysis, clearly environmentally superior. The RDEIR partly bases this conclusion on the assertion that the landfill alternative would cause a significant and unavoidable land use impact while the Project would not, but that contention is absurd. As discussed above the Project would, in fact, have several significant and unavoidable impacts related to land use—after all, the Project proposes to drill for oil in the middle of a wildlife preserve. By contrast, the only such impact that the RDEIR identifies for the Landfill Alternative relates to the need for a permit to operate the facilities on the landfill. Given that such a permit is available, this does not appear to be any sort of a land use conflict, let alone a significant and unavoidable one. Thus, the proposed Project has more significant and unavoidable impacts than the Landfill Alternative. And even if the EIR were correct on this count, the Landfill Alternative would have the same number of

significant and unavoidable impacts as the proposed Project, while improving on the Project in many other areas. According to the EIR, the Landfill Alternative would reduce the Project's impacts in eight impact areas. RDEIR at Table 6.3. This is likely understated, as the EIR underestimates several of the proposed Project's impacts.

The EIR thus makes a strong case that the Savage Canyon Landfill location is environmentally superior to the proposed Project site. It concludes, however, that the Project is in fact superior. It reaches this illogical conclusion with reasoning that has no place in an environmental document:

[W]ith the Landfill Alternative, there would be a potential reduction to the Landfill life and there would be difficulties associated with permitting the alternative within an operating landfill. There would also be a reduction in recoverable reserves from the reservoir thereby preventing this alternative from achieving all of the Project objectives.

RDEIR at 6.57

This explanation has nothing to do with the alternative's environmental impacts. The "difficulties" of permitting and the amount of recoverable oil do not make the alternative inferior, they simply make it less desirable for the applicant. But the RDEIR cannot, legally, take account of the oil company's interests in this analysis. It must make an independent analysis of environmental impacts. In that light, it is clear that the Landfill Alternative is environmentally superior. The EIR must identify it as such. Moreover, because the alternative is feasible and meets the Project's objectives, the City Council may not approve the Project. Pub. Res. Code § 21002.

CONCLUSION

For the foregoing reasons, Hills for Everyone urges the City to delay further consideration of the Whittier Main Oil Field Development Project unless and until the City prepares and recirculates a revised draft EIR that fully complies with CEQA and the CEQA Guidelines.

City of Whittier
July 21, 2011
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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Handwritten signature of Gabriel Ross in cursive, with the initials "CJB" written at the end.

Gabriel Ross

Handwritten signature of Carmen J. Borg in cursive.

Carmen J. Borg, AICP, Urban Planner

cc: Claire Schlotterbeck, Hills For Everyone
Andrea Gullo, Puente Hills Landfill Native Habitat Preservation Authority
Judy Tamasi, Wildlife Corridor Conservation Authority

Attachments:

- Exhibit A: SMW Comment Letter on DEIR, dated December 6, 2010.
- Exhibit B: Statement for Receipts and Disbursements for the Puente Hills Landfill Native Habitat Preservation Authority

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