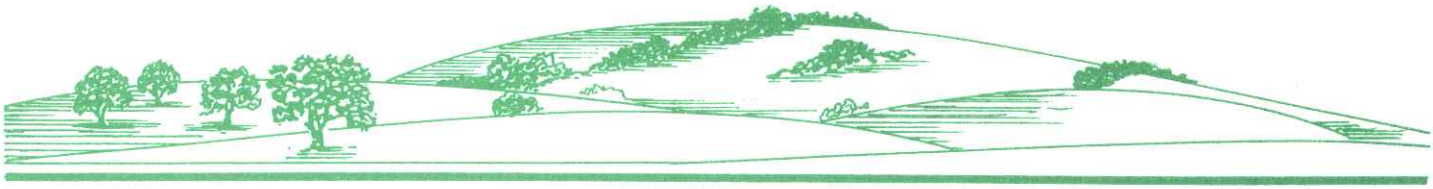

LOS ANGELES COUNTY REGIONAL PARK AND OPEN SPACE DISTRICT

October 29, 2013

The Honorable Board of Supervisors
Los Angeles County
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Board of Supervisors:

HEARING ON WHITTIER MAIN OILFIELD LEASE AND THE PROPOSED CHANGE OF USE AND PARTIAL DISPOSITION OF PROPOSITION A GRANT-FUNDED PROPERTY IN THE WHITTIER HILLS (FOURTH SUPERVISORIAL DISTRICT-THREE VOTES)

SUBJECT

This recommended action will deny the proposed change of use and partial disposition of land in the Whittier Hills that was acquired with Los Angeles County Proposition A funds; disapprove a lease between the City of Whittier and an oil company that would allow an oil and gas exploration and production project on land acquired as open space and wildlife habitat; and uphold the requirements of Proposition A and the Project Agreement relating to the use of the property and the use of proceeds from any change of use or disposition.

IT IS RECOMMENDED THAT YOUR BOARD, ACTING AS THE GOVERNING BOARD OF THE LOS ANGELES COUNTY REGIONAL PARK AND OPEN SPACE DISTRICT, AFTER THE PUBLIC HEARING

1. Close the public hearing and consider the comments made and submitted for the public hearing, including the enclosed analysis on the lease and proposed Whittier Main Oilfield Project prepared by independent expert consultant Sapphos Environmental, Inc., and the proposed findings and order enclosed hereto.

2. Take the following actions: (a) find that the proposed Whittier Main Oilfield Project and Whittier's lease of the property are inconsistent with the purpose and intent of Los Angeles County Proposition A and the terms of the Project Agreement for Proposition A Grant No. 58L1-94-0034; (b) deny the proposed change of use and

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partial disposition of the property in Whittier Hills acquired with Proposition A funding; (c) refuse to consent to the City of Whittier's lease of the property; (d) determine that the City of Whittier has used proceeds from the oil and gas lease of the property for general fund purposes in violation of Proposition A and the Project Agreement; (e) determine that if the project and lease go forward for any reasons, any proceeds from the lease, and/or any other disposition of property acquired with Proposition A funding, including any subsurface mineral rights, must be used consistent with the requirements of Proposition A and the Project Agreement, and cannot be used for general fund purposes by Whittier, or any other entity; (f) find that the settlement agreement entered into by the City of Whittier with the Mountains Recreation and Conservation Authority violates Proposition A and constitutes a breach of the Project Agreement because it was entered into without District approval and allows proceeds from the Whittier Main Oilfield Project to be used contrary to the requirements of Proposition A and the Project Agreement.

3. Find that the proposed actions are not subject to the California Environmental Quality Act (CEQA) as CEQA review is not required for a project that is being rejected or disapproved.

4. Adopt the enclosed findings and order as your Board's decision regarding the Lease and Project.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is for your Board, acting in its capacity as the governing body of the Los Angeles County Regional Park and Open Space District (District), to deny the lease (Lease) between the City of Whittier (Whittier) and Matrix Oil Corporation and Clayton Williams Energy, Inc. (collectively Matrix), and the Whittier Main Oilfield Project (Project) that would allow oil and gas drilling and processing on 1,280 acres in Whittier Hills (Whittier Hills Property) that Whittier acquired using Proposition A funds. By taking action to deny the Lease and Project, your Board will ensure that the purpose, intent, and requirements of Los Angeles County Proposition A and the Project Agreement are upheld.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The proposed recommendations further the Board approved County Strategic Plan Goals of Operational Effectiveness (Goal 1) by upholding the purposes and intent of the Proposition A, the promises made to County voters, and the requirements of the Project Agreement.

FISCAL IMPACT/FINANCING

This action will have no direct fiscal impact. The District is currently a party in two lawsuits related to this Project and we anticipate that the District will be sued over the Board's decision, regardless of whether the decision is to approve or deny the Lease and the Project.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Background on Proposition A

On November 3, 1992, County of Los Angeles voters approved Los Angeles County Proposition A, Safe Neighborhood Parks, Gang Prevention, Tree-Planting, Senior and Youth Recreation, Beaches and Wildlife Protection (Proposition A), which formed the District, created an assessment levy, and provided $540 million in grant funds for the acquisition, development, improvement, restoration, or rehabilitation of real property for regional beaches, recreational facilities, parks and park safety, gang prevention, senior citizen recreation facilities, wildlife habitat, natural lands, or improvement of the Santa Monica Bay. The purpose and intent of Proposition A is to benefit property and improve the quality of life in the County of Los Angeles by providing funds to acquire, preserve, and protect the park, wildlife, recreation, and natural lands in the County. The governing body of the District is your Board, and your Board is vested with all powers and authority of the District. Proposition A grants authority to the District to take all actions necessary and desirable to carry out the purposes of Proposition A.

Acquisition of the Whittier Hills Property with Proposition A Funds

Section 8, Subsection (b), Paragraph (2), Subparagraph (QQ) of the 1992 Proposition A allocated $9.3 million to Whittier for the acquisition of natural land and development of related facilities in the Whittier Hills. Section 8, Subsection (c) allocated $40 million to the Santa Monica Mountains Conservancy (SMMC), of which $7 million was designated for expenditure in the Whittier Hills. On July 6, 1993, Whittier adopted Resolution No. 6416 approving the filing of an application (Application) with the District for Section 8(b)(2) QQ funds and certified that it "understands the assurances and certifications in the application form[.]" In agreeing to those assurances, Whittier promised that it would: (1) "use the Property only for the purposes of the Proposition and will make no other use, sale, or other disposition of the Property except as authorized by specific act of the Board of Supervisors as the governing body of the District"; and (2) "maintain the Property acquired, developed, rehabilitated or restored

with the funds in perpetuity." The District subsequently entered into a Project Agreement (Project Agreement) with Whittier, and a separate agreement with the Santa Monica Mountains Conservancy (SMMC) regarding the expenditure of the grant funds pursuant to Proposition A to acquire property in the Whittier Hills.

In the Project Agreement Whittier agreed to:

- Maintain and operate the property acquired in perpetuity;
- Use the property only for the authorized purposes under Proposition A for which grant funds were requested, and not permit any other use of the area, except as allowed by a specific act of your Board;
- Not allow, without the prior consent of the District, the use of any portion of the Project by any private person or entity, other than on such terms as may apply to the public generally or enter into any contract with a private entity for the management or operation of the Project or any portion thereof;
- Submit any proposed lease for the properties acquired with Proposition A funds to the District for prior approval; and
- Comply with the provisions of Proposition A and the Procedural Guide.

The Procedural Guide expressly requires "prior District approval" for: (1) any proposed lease agreement with a non-government entity; and (2) any non-governmental use, operations, management, or other activity on the site.

After entering into the Project Agreement, Whittier worked with The Trust For Public Lands, SMMC, and MRCA to acquire the 1,280 acres constituting the Whittier Hills Property at issue. Whittier's acquisition, funded solely with funds from Proposition A, included the subsurface mineral rights to the Whittier Hills Property.

Whittier acquired the Whittier Hills Property subject to two separate deed restrictions that prevent the land from being used for any purpose other than as open space, wildlife habitat, and passive recreational uses.

In August 1997, Whittier entered into a Property Acquisition and Maintenance Agreement with the Puente Hills Landfill Native Habitat Preservation Authority (Habitat

Authority) whereby the Habitat Authority was given power to "maintain, preserve and protect" in perpetuity the Whittier Hills Property and other open space lands owned by Whittier for "public open space and recreational uses on behalf of this generation and the generations to come."

On July 26, 2007, the Habitat Authority approved a Resource Management Plan (RMP) to guide it in maintaining in perpetuity the public open space and recreational use of the lands it manages for Whittier, including the Whittier Hills Property.

Whittier's Lease with Matrix

On October 28, 2008, Whittier entered into a Lease with Matrix allowing extensive oil and gas drilling on the entire 1,280-acre Whittier Hills Property. The Lease provided that Matrix shall make no surface entry onto the Whittier Hills Property unless the District first releases the land from Proposition A protection. On May 8, 2012, Whittier amended the Lease to eliminate the requirement to obtain the District's approval for the Project.

The rights and powers granted to Matrix under the Lease for testing, drilling, construction, and related activities for the entire Whittier Hills Property are broad. The Lease grants Matrix the exclusive right of exploring, drilling, and operating on the property for oil, gas, other hydrocarbons, and other commercially valuable substances which may be produced through wells on the property. The Lease contains no definitive term, but instead allows Whittier the option "to purchase all of Lessee's right, title, and interest in the Lease and all wells thereon, and operating equipment and pipeline associated therewith at the fair market value thereof." The Lease may be extended beyond 25 years. The Lease allows Matrix to apply to Whittier for conditional use permits (CUPs) to conduct drilling, processing, and associated activities.

Whittier has approved a CUP allowing Matrix to undertake a three-phased project consisting of drilling up to 60 wells, constructing storage tanks and processing equipment, an oil truck loading facility, an oil pipeline, and a natural gas pipeline. As the Lease allows Whittier to grant future CUPs to Matrix for additional oil and gas wells, the District's decision to consent to the Lease and the change of use could result in more drill sites and additional activities beyond those authorized by the existing CUP.

Litigation Challenging the Lease and Project

Several lawsuits have been filed and litigated, and continue to be litigated, challenging the Project and Lease. On October 27, 2010, the Open Space Legal Defense Fund (OSLDF) sued Whittier alleging that the Project violated Proposition A and the Public Trust Doctrine (*OSLDF v. City of Whittier, et al., Case No. BS128995*). On December 23, 2011, OSLDF filed a second lawsuit against Whittier (with the County and District as real parties) challenging the Project's CUP and the final Environmental Impact Report (EIR) for the Project. (*OSLDF v. City of Whittier, et al.*, Case No. BS 135187). The two OSLDF lawsuits were litigated through October 30, 2012, when they were settled pursuant to a settlement agreement.

On February 24, 2012, Mountains Recreation and Conservation Authority (MRCA) filed a lawsuit challenging the CUP and the Lease, alleging violations of Proposition A and the two deed restrictions applicable to the Whittier Hills Property (MRCA Lawsuit) (*MRCA v. City of Whittier, et al., BS136211*). On August 6, 2012, SMMC filed a lawsuit against Whittier alleging that the Project violated Proposition A (*Santa Monica Mountains Conservancy v. City of Whittier et al.*, BS138796). On October 25, 2012, the District, the County, and the Board filed a cross-complaint asserting that Whittier had violated Proposition A, the Project Agreement, the Public Trust Doctrine, and CEQA in approving the Project, the Lease, and amending a deed restriction.

On December 14, 2012, a fifth lawsuit, *Prop "A" Protective Association v. City of Whittier*, et al., BS140884, challenging the Project as violating Proposition A was filed and remains pending.

On June 6, 2013, the County's cross-complaint, MRCA's claims, and SMMC's claims were tried. Following the trial, the court issued a decision on June 6, 2013 which included the following rulings.

First, the court held that Whittier breached the Project Agreement between the District and Whittier by failing to obtain the District's approval before entering into the Lease. In connection with this ruling, the court further held that in order to ensure Proposition A's specific purpose of restoring and preserving parks, wildlife, and open space resources in identified areas, Proposition A must be interpreted as permitting a change of use or disposition of property acquired with Proposition A funding only when the District consents. Based on this breach of contract, the court found that the District is entitled to an injunction prohibiting the Project from moving forward until the District approves

the Project or until the Project Agreement expires on June 30, 2015, whichever occurs first. In exercising its discretion, the court found that the District will act as a responsible agency under CEQA and must decide whether the Project is consistent with Proposition A.

Second, the court noted that Proposition A requires that any proceeds generated from the Project must be used for Proposition A purposes and not for Whittier's general fund purposes.

Third, the court held that the restrictive covenant over a portion of the former Chevron land where the Project is located (Chevron Deed Restriction) requires preservation of said land as open space in perpetuity. In this regard, the court found that the Project violates the Chevron Deed Restriction and that MRCA is entitled to a permanent injunction precluding any Project activities on the 600 acres where the Chevron Deed Restriction applies. A portion of the Project drilling site and an access road are located within the Chevron Deed Restriction area.

Finally, the court held that the County and SMMC could not directly enforce Proposition A because they did not file suit within 90 days of Whittier's approval of the CUP.

On June 13, 2013, the court entered a preliminary injunction prohibiting any physical work in furtherance of the Project, unless the District exercises its discretion to approve the Project, until the Project Agreement expires on June 30, 2015, whichever occurs first.

On August 15, 2013, MRCA agreed to a settlement with Whittier that requires Whittier to share up to $11.25 million in royalties from the Project and Lease with MRCA in exchange for MRCA dismissing its lawsuit, which it did on August 20, 2013. On October 1, 2013, judgment was entered against SMMC.

On October 2, 2013, judgment was entered in favor of the District in the MRCA Lawsuit. The judgment provides the District with an order of specific performance to enforce the requirement in the Project Agreement that Whittier obtain the District's discretionary consent before entering into any lease or other agreement that changes the use, or disposes of, any portion of the property or allows the Project to proceed. The judgment also includes a final injunction restraining and enjoining Whittier and Matrix from any

activity or disturbance on the Whittier Hills Property in pursuit of, or related to, the Project.

Analysis of Lease and Project for Consistency with Proposition A and the Project Agreement

The District retained Sapphos Environmental to prepare an analysis of the Lease and Project for consistency with the intent and requirements of Proposition A and the Project Agreement (Sapphos Analysis). A copy of the Sapphos Analysis is enclosed hereto and serves as support for District staff's recommendations in this letter and the enclosed findings.

The Lease and Project Constitute a Change in Use and Partial Disposition Under Proposition A and the Project Agreement

Pursuant to Proposition A and the Project Agreement, the Lease constitutes both a change of use of the Whittier Hills Property and any disposition of less than the entire interest in the Whittier Hills Property originally acquired by Whittier.

The Project Agreement and Proposition A Section 16(b) provide certain requirements if the District were to approve a change in use "to one other than a use permitted under the category from which the funds were provided." Section 8 of Proposition A provides for multiple categories of funding for specific uses throughout the County. Whittier used Proposition A funds designated in Section 8(b)(2QQ) for "acquisition of natural lands and development of related facilities in the Whittier Hills." Similarly, SMMC Proposition A funding was utilized by MRCA to facilitate the acquisition of a portion of the Whittier Hills Property from the funding category set forth in Section 8(c)(6) of Proposition A for the "preservation of park and open space land" in the Whittier Hills. Because the oil and gas drilling and associated activities allowed under the Lease are not a use permitted under either of these categories of Proposition A funding, the Lease constitutes a "change of use." If the District were to approve the Lease and Project, the provisions of Section 16(b) would be applicable to the Project. Similarly, because the Lease constitutes a disposition of mineral rights to pursue oil, gas, and other mineral exploration and drilling, it is a disposition of the Whittier Hills Property, making Section 16(b) applicable.

Section 16(b) provides that the greater of: (1) the amount of the grant; (2) the fair market value of the real property; or (3) *the proceeds* from the portion of such property

developed with the grant, shall be used only as allowed under Proposition A. Similarly, the Project Agreement provides that the greater of the three be paid to the District in the event of a sale or other disposition of property acquired with Proposition A funds. The term "proceeds" includes all rental payments and royalties from the Lease and Project.

Whittier violated Proposition A and breached the Project Agreement by leasing the Whittier Hills Property to Matrix without the approval of your Board. Whittier has subsequently taken additional actions in violation of Proposition A and in breach of the Project Agreement, including: (1) utilizing rental payments from the Lease for general fund purposes; (2) indicating its intent to use lease rental payment and royalties for general fund purposes; (3) failing to provide financial information related to the grant-funded property as requested by the District; (4) entering into an agreement with the Habitat Authority to share royalties from the Project and Lease with the Habitat Authority, without written approval from the District; and (5) entering into an agreement with MRCA to share royalties from the Project and Lease with MRCA without written approval from the District

Public Notice

Public notice of the public hearing was sent to all property owners living within 500 feet of the Whittier Hills Property and to other interested parties and agencies, including Whittier and Matrix. Notice of the public hearing was published in the *Los Angeles Times*, *Whittier Daily News*, and *La Opinion*. The public notice and information about this matter, including links to relevant documents, has been posted on the District's website for several weeks.

Recommendation

After the public hearing, District staff recommends that your Board finds that the Lease and Project are inconsistent with Proposition A and for the reasons set forth in the Sapphos Analysis and the proposed findings and order enclosed hereto, adopt the enclosed findings and order to:

- Disapprove the Lease and Project and declare the Lease void;

- Deem the Lease and Project to be inconsistent with the intent and purpose of Proposition A, Public Resources Code sections Code section 5539.9(j) and (k);

- Deny the change of use and partial disposition of grant-funded property in the Whittier Hills that would result from approval of the Lease and Project;

- Refuse to approve the Lease and Project because they would substantially interfere with the use of the Whittier Hills Property as open space and wildlife habitat and will result in significant direct and indirect adverse impacts to the Whittier Hills Property, including significant unavoidable impacts to air quality, aesthetics, hydrology and water quality, land use, and recreation;

- Find that Whittier has violated Proposition A and breached the Project Agreement in relation to the Lease and Project, including by spending Lease rental payments for general fund purposes;

- Find that the MRCA Settlement Agreement violates Proposition A and constitutes a breach of the Project Agreement by Whittier because it was entered into without District approval and allows proceeds from the Project to be used contrary to the requirements of Proposition A and the Project Agreement; and

- Determine that, if for any reason the Project and Lease ever moves forward, all proceeds resulting from the Lease, Project, or any future an oil and gas production activities involving the Whittier Hills Property must be used consistent with the requirements of Proposition A and the Project Agreement and cannot be used for general fund purposes by Whittier, or any other entity.

ENVIRONMENTAL DOCUMENTATION

Whittier prepared an environmental impact report (EIR) for the Project. No EIR was prepared for the Lease. The District submitted four comment letters on the EIR raising Proposition A and land use incompatibility and various environmental issues including: biological resources, hazards and hazardous materials, air quality, land use, and recreation. In response to the District's comments, Whittier replied that Proposition A was "a legal issue" that was "separate and apart from the environmental issues analyzed" in the EIR and that Whittier would "comply with all legal requirements under Proposition A." Whittier further replied that the "Project would not be able to go forward unless and until the land were permitted to be used for oil extraction consistent with the requirements of Proposition A... [that] will be addressed prior to any implementation of the Proposed Project."

In evaluating the Lease and Project, the District acts as a responsible agency under CEQA. Your Board is required to accept the EIR as legally adequate, but has discretion to evaluate and mitigate for the Project's significant environmental effects that would directly result from the Project, if your Board decides to approve it.

The EIR certified by Whittier found the Project would result in significant and unavoidable impacts to air quality, aesthetics, hydrology and water quality, land use, and recreation. Whittier prepared a statement of overriding considerations (SOC) pursuant to CEQA based on the economic benefits of the project to Whittier.

Section 21080 (b)(5) of the CEQA Statute and Section 15270(a) of the State CEQA Guidelines provide that CEQA does not apply to a project that a public agency rejects or disapproves. Thus, if your Board takes the recommended actions to disapprove and reject the Lease and Project are not subject to further CEQA review because CEQA only applies to projects that are approved. If your Board decides to approve the Lease and Project, it is recommended that the matter be referred back to District staff to prepare the appropriate CEQA document and analysis to bring back to your Board for further consideration.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

These actions are needed to uphold the intent and purpose of the Proposition A and to enforce the terms of the Project Agreement entered into between Whittier and the District relating to the Whittier Hills Property. This action will require the Whittier Hills Property to remain as open space. The decision on this matter will also set a precedent for other properties acquired with Proposition A funds.

CONCLUSION

Please instruct the Executive Officer-Clerk of the Board to sign the enclosed findings and order and return one adopted copy of this action to the Chief Executive Office, Capital Projects Division, and to the Department of Parks and Recreation.

Respectfully submitted,

Russ Guiney
Director, Parks and Recreation

RG:JB:WRO

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

Enclosures: Sapphos Environmental Analysis of Whittier Oil Project and Lease for Consistency with Proposition A and the Project Agreement
Proposed Findings and Order