

RESOLUTION NO. 8424

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. CUP09-004 TO ALLOW THE DEVELOPMENT AND OPERATION OF THE WHITTIER MAIN OIL FIELD PROJECT LOCATED ON CITY OWNED LAND WITHIN THE PUENTE HILLS HABITAT PRESERVATION AUTHORITY AREA (FORMERLY THE WHITTIER MAIN OILFIELD), GENERALLY LOCATED NORTH OF MAR VISTA STREET AND WEST OF COLIMA ROAD

WHEREAS, the Planning Commission of the City of Whittier considered the Project and environmental review on October 19th, 20th, 24th, and 25th of 2011, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support of or in opposition to this matter; and

WHEREAS, on October 25, 2011, the Planning Commission voted 5-0 to adopt Resolution No. P.C. 11-30 certifying the Final Environmental Impact report and related environmental documents for the Whittier Main Oil Field Development Project; and approving Resolution No. P.C. 11-31 approving Conditional Use Permit CUP09-004 with project refinements presented in Appendix O of the Final Environmental Impact Report ("FEIR"), to allow the development and operation of the Whittier Main Oil Field Development Project; and

WHEREAS, on October 26, 2011, Councilman Henderson and Councilman Vinatieri requested that Conditional Use Permit No. CUP09-004 be formally reviewed by the Council in order to make a final determination on the Planning Commission's decision regarding the Whittier Main Oilfield Development Project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

Section 1. The project, known as the Whittier Main Oil Field Development Project, is the drilling, exploration and production of oil and gas reserves located on property owned by the City of Whittier that is part of the Puente Hills Landfill Native Habitat Preserve (the "Project"). The Project would occur in three phases, with the first phase consisting of a drilling and testing phase which would involve the drilling of up to three test wells to assess the quality and quantity of oil and natural gas produced. The second phase, known as the design and construction phase, would involve construction of well cellars, the installation of gas and oil processing equipment, and crude transportation facilities. The third phase, known as the operations and maintenance phase, would involve drilling the remaining wells (for a total of up to 60 wells), and the operation and maintenance of the gas and oil

facilities and the wells, which would include well workovers and occasional well re-drilling. The Project site would contain the oil and gas drilling and processing facilities on a single pad, which would include the well area, a gas plant area, and an oil plant area consisting of well cellars, well test stations, liquid and gas separating equipment, a truck loading facility, an oil processing facility, and gas plant. The total permanent area required for the pads would be approximately 6.9 acres with an additional 8.6 acres of roadways (most of which currently exist in the area). A fuel modification zone would be required by the Los Angeles County Fire Department which would encompass an additional 7.6 acres. Up to an additional 4.9 acres would be temporarily disturbed for construction and grading of the site. The total impacted area for the Project would be 28.1 acres.

Section 2. In April 2009, Matrix Oil Corporation (the “Applicant”) submitted an application for a conditional use permit (“CUP”) for an oil drilling, exploration and production project. A Draft Environmental Impact Report for this project was released to the public in October 2010 for a 60-day comment period. After this 60-day comment period, in April 2011, the Applicant amended its CUP application to establish a new project that conformed to the Central Consolidated Site Alternative detailed in the Draft Environmental Impact Report. These revisions resulted in what is now the Project as defined herein.

Section 3. A Draft Environmental Impact Report was prepared for the Project in accordance with the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines and circulated for public review from June 6, 2011 to July 21, 2011 for a 45-day public review.

Section 4. After the Draft Environmental Impact Report was prepared and circulated for public review, and in an effort to be responsive to concerns raised by various commenters, Matrix proposed project refinements by redesigning the layout and amount of grading required for the Project pads, reducing the amount of earth moved from the site during Project grading from 147,000 yards to zero. The refinement reduced the expected duration of grading from 24 weeks to 12 weeks, resulting in the elimination of 9,313 truck trips during Project grading. These changes are discussed and analyzed in Appendix O of the FEIR, and are incorporated as part of the Project; and

Section 5. The City Council, at specially scheduled meetings, considered the Project and environmental review on November 8th, 9th, 14th, 15th, 21st, 22nd, and 28th of 2011, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support of or in opposition to this matter.

Section 6. Following consideration of the entire record of information received at the public hearing and due consideration of the proposed Project, the City Council adopted Resolution No. 8423 certifying the Final Environmental Impact Report prepared for the Whittier Main Oil Field Development Project, adopting Findings pursuant to the California Environmental Quality Act, adopting a Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Program.

Section 7. A duly noticed public hearing was held on Conditional Use Permit No. CUP09-004 by the City Council on November 8th, 9th, 14th, 15th, 21st, 22nd, and 28th of 2011. Based upon the evidence presented, including staff and expert analysis, public testimony, and the suggested conditions of approval, the City Council determined that the findings required by Section 18.52.040 (B) of the Whittier Municipal Code for the granting of said Conditional Use Permit are as follows:

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

FACT: The Project proposes to occupy approximately 7 acres of the 1,290-acre City owned Whittier Main Oil Field site. The Project has been designed to work within the topography of the approximately 7 acre site. To that end, the Project has been designed to achieve a grading plan that balances cut and fill and minimizes soil export, and to maximize use of the existing disturbed land resulting from prior oil drilling in the site area. In addition, recommended conditions of approval require City review and approval of detailed grading plans, erosion control and restoration of disturbed slopes. The Project site is adequate in size, shape and topography to accommodate the proposed oil and gas production and processing facilities.

2. FINDING: *That the site proposed for the use has sufficient access to streets, which are adequate, in width and pavement type, to carry the quantity and quality of traffic generated by the proposed use.*

FACT: The Project will add additional truck and vehicle trips to City streets. Primary Project travel routes include Catalina Avenue, Penn Street and the North Access Road. Conditions of approval for the Project require a Traffic Management Plan, off-site staging of construction vehicles and equipment, and car or van pooling to reduce impacts on City streets. The Project FEIR found that there

are no significant and unavoidable impacts to transportation and circulation, including impacts to streets. As a result of the Project refinements analyzed in Appendix O to the Final EIR, including the revisions to obtain a balanced cut and fill site, the Project will not require approximately 9,300 truck trips to remove soils, as previously anticipated. Subject to approved conditions of approval, the Project site has adequate street access to accommodate the proposed oil and gas production and processing facilities.

- 3. FINDING:** *That the proposed use will not unreasonably interfere with the use, possession, and enjoyment of surrounding and adjacent properties and will be compatible with the permitted uses of surrounding and adjacent properties.*

FACT: The Project will re-introduce oil and gas production and processing facilities into a limited open space area, although the specific Project site area is not currently open to the public and is accessible only to staff of the Habitat Authority for maintenance of the Preserve. Over 100 mitigation measures have been imposed upon the project as conditions of approval in order to ensure that the oil and gas production operations would not unreasonably interfere with the use, possession, and enjoyment of the open space area and the Preserve. Nevertheless, the FEIR found that certain impacts cannot be reduced to less than significant levels and would remain significant and unavoidable. These impacts include air quality, aesthetics, hydrology and water quality, land use and policy consistency and recreation. However, these potential impacts would be overridden by the benefits of the restoration activities at the Preserve that would be undertaken as a result of the Project. Without the approval of the Project, the Preserve is unlikely to have funding that would allow continued restoration and preservation of the site. The Project provides for continuing funding for the Habitat Authority with annual administrative fees and mitigation fees upon issuance and acceptance of a CUP. The Project would provide a stable source of funding for the Habitat Authority for as long as the wells produce oil and gas. In addition, the City would significantly benefit from funds received from the royalties generated from oil and gas production. Those funds could provide for enhancements to public services and infrastructure throughout the life of the Project. Some of those improvements could include education, safety, traffic, beautification projects and other community benefits. Although the Project would interfere with

the use and enjoyment of a small part of the Preserve, the benefits of the Project to the Preserve and the community do not make this interference unreasonable. In addition, the Project is compatible with the permitted uses of surrounding and adjacent land uses. The City of Whittier General Plan permits oil and gas production in all land use districts and the City's Zoning Ordinance allows oil and gas production drilling in all zone districts (including the Open Space Zone) with a Conditional Use Permit. The Project, as mitigated, is therefore compatible with the surrounding land uses, which are open space but allow for the potential of oil drilling under the Zoning Ordinance.

- 4. FINDING:** That the proposed use will be compatible with the permitted uses of surrounding and adjacent properties

FACT: The Project is compatible with the permitted uses of surrounding and adjacent land uses. The City of Whittier General Plan permits oil and gas production in all land use districts and the City's Zoning Ordinance allows oil and gas production drilling in all zone districts (including the Open Space Zone) with a Conditional Use Permit. The Project, as mitigated, is therefore compatible with the surrounding land uses, which are open space but allow for the potential of oil drilling under the Zoning Ordinance.

- 5. FINDING:** *That the use will, as to location, operation and design, be consistent with the General Plan and the Whittier Zoning Regulations.*

FACT: The City of Whittier General Plan permits oil and gas production in all land use districts (including the Open Space Zone) and the City's Zoning Ordinance allows oil and gas production drilling in all zone districts with a Conditional Use Permit; see Section 18.52.030 of the City's Zoning Ordinance. Because the Open Space Zone does not call out 18.52.030 uses (including oil drilling) as a principally permitted use, a CUP is required. The Project, as mitigated and conditioned, is found to be consistent with the goals and policies of the City of Whittier General Plan as extensively detailed in the FEIR. The Project as mitigated protects existing wildlife habitat, and in fact with the mitigation measures required will expand and enhance existing wildlife habitat. Moreover, given the fact that the City intends to provide

replacement open space land for the Project site, and ensure there is no net loss of open space, this is consistent with the goal of preserving open space areas. Indeed, revenues from the Project that will be paid to both the Habitat Authority and to the City will provide funding for both protecting and preserving existing and additional open space and wildlife habitat. The Project is consistent with the General Plan because it will further the objectives and policies of the General Plan and not obstruct their attainment. The City awarded a lease to Matrix that could permit resumption of oil and gas extraction from the proposed Project Site. Matrix has coordinated with the City to develop plans to seek a conditional use permit, while considering ecological concerns to preserve natural habitats. Although the Project would result in unavoidable adverse impacts, the long-term benefits of the Project to the Preserve and community bring the Project into consistency with the spirit of the City General Plan and zoning regulations.

Section 8. The City Council further finds that there are no existing conservation easements placed on the property that would prohibit the Project. The Project site is not located in the area covered by restrictions placed on land previously owned by Unocal. In addition, no other documents legally establish a binding conservation easement on the Project site. Various documents relating to 960 acres of land purchased from Chevron demonstrate a declaration of Chevron's intent as the grantor of the property to reserve to itself the right to create a conservation easement area, but no conservation easement was actually recorded on this property at that time. This declaration and offer was limited to a term of five years after which, if the area was not specifically designated and dedicated it would cease to be effective and the reservation would become null and void. No conservation easement was ever recorded over this property.

Section 9. The City Council further finds that the proposed project will not violate the public trust doctrine. One of the City's objectives in this project is to obtain a stream of revenue that can maintain the Puente Hills Habitat Preservation Authority and the Habitat Preserve that it manages on behalf of the City of Whittier. In addition, the leased area is only a small fraction—approximately 7 acres of 1,290 acres—of the larger Preserve. Furthermore, as a condition of this approval, the City will place a conservation easement on the remaining acreage outside of the project area. The current situation is thus similar to the circumstances that the California Supreme Court described in *Harter v. City of San Jose*, 141 Cal. 659 (1904), wherein the court found that the project there complied with the public trust doctrine.

Section 10. The City Council further finds that the Project is not prohibited by Los Angeles County Proposition A (adopted in a general election on November 3,

1992). The City Council recognizes that the Project could render the use of up to seven acres of property in the Whittier Hills incompatible with Proposition A purposes. Thus, the City Council recognizes that the City must provide sufficient funds to the Los Angeles County Parks and Recreation Open Space District (which administers Proposition A) under current market conditions to replace the approximately seven acres of real property no longer devoted to Proposition A purposes. The word “reimburse” is a clear limitation of the City’s obligation, making certain that a reimbursement sufficient to replace lost property is the extent of that obligation. In that regard, according to the California Supreme Court, “the primary and ordinary meaning of the word ‘reimbursement’ is ‘to pay back, to make restoration, to repay that expended.’ (Webster’s New International Dictionary, Section Edition; Funk and Wagnall’s Standard Dictionary.)” *County of Los Angeles v. Frisbie*, 19 Cal. 2d 634, 640 (1942). The City Council therefore finds that the District will be reimbursed when it is put in the financial position to replace the real property lost for Proposition A uses.

Section 11. Based upon the above findings and determinations, the City Council hereby approves Conditional Use Permit No. CUP09-004 with the design refinements presented in Appendix O of the FEIR, subject to the conditions of approval in Attachment “A” and incorporated herein by reference.

Section 12. The City Clerk-Treasurer shall certify to the passage and adoption hereof.

APPROVED AND ADOPTED this _____ day of _____ 2011.

CATHY WARNER, Mayor

ATTEST:

KATHRYN A. MARSHALL
City Clerk-Treasurer

Attachments

A) Conditions of Approval for Conditional Use Permit No. CUP09-004.