

From: [Cynthia Bell](#)
To: [Trang, Cindy](#)
Cc: [Chow, Beth](#); [David Giannotti](#); [Dave Hirsch](#)
Subject: City Council Hearing of December 4, 2024, Agenda Item 4a
Date: Tuesday, December 3, 2024 3:49:37 PM
Attachments: [Letter to City Council 12.3.24.pdf](#)
[Restrictive Covenant South Parcel Recorded 7.16.13 copy.pdf](#)

[EXTERNAL EMAIL]

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Dear Ms. Trang:

This office represents the OII Site Custodial Trust ("Trust"). The Trust is the owner of the Operating Industries, Inc. ("OII") Superfund site ("Site") located along the 60 Freeway, a portion of which is located in the City of Monterey Park and is commonly referred to as the "North Parcel" and "South Parcel."

Attached please find a letter (and enclosure) addressed to the City Council outlining the concerns of the Trust regarding the upcoming rezoning of the South Parcel of the Site, identified by the address 900 Portero Grande Drive.

If you have any questions please feel free to call me. Thank you, Cynthia

Cynthia Bell
Law Office of Cynthia Bell
850 San Clemente Drive, #516
Newport Beach, CA 92660
949/464-9284 Office
714/801-9144 Cell
cynthia@cbellassociates.net

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them.

LAW OFFICE OF CYNTHIA BELL

December 3, 2024

EMAIL:

cynthia@cbellassociates.net

VIA-MAIL ONLY

City Council of the
City of Monterey Park

Attention: Cindy Trang, Deputy City Clerk
ctrang@montereypark.ca.gov

Re: City Council Hearing on December 4, 2024, Agenda Item 4a

Dear Council Members:

This office represents the OII Site Custodial Trust (“Trust”). The Trust is the owner of the Operating Industries, Inc. (“OII”) “Superfund” site (“Site”) located along the 60 Freeway, a portion of which is located in the City of Monterey Park and is commonly referred to as the “South Parcel” and the “North Parcel.” The Trust received a letter from the Director of Community Development dated November 21, 2024 advising that the South Parcel of the Site, identified by the address 900 Potrero Grande Dr., is part of a “Zone Change” to implement the City’s General Plan and that such Zone Change was previously submitted to the voters and approved.

The Zone Change results in the current zoning O-P being rezoned to OS, Open Space. Upon reviewing Title 21 Zoning, Chapter 21.07 O-S-Open Space Zone, it appears that the uses allowed in an Open Space zoning area are incompatible with the allowed use of the Site. The Site has ongoing operations and maintenance for the remedial systems installed at this landfill that are to protect present or future human health and safety of the environment as a result of the presence of hazardous materials. Attached is a copy of the Covenant to Restrict Use of Property, Governmental Restrictions entered into by and between the Trust, the Department of Toxic Substances Control (“DTSC”) for the benefit and enforceability by the United States Environmental Protection Agency (“EPA”) as a third-party beneficiary and recorded in the Official Records of Los Angeles, County, California on July 16, 2013.

Section 4.01 of the Restrictive Covenant prohibits certain uses and Section 4.02 of the Restrictive Covenant prohibits certain activities on the Site. Additionally the Restrictive Covenant binds all future owners or occupants. There are no Open Space Zone activities that could be allowed at or on the Site, which is also true if the zoning were to remain O-P. Also, the Site has no public access that would allow any Open Space Zone activities since the only access is through a security gate situated near the North Parcel and a private road and freeway overpass to the South Parcel.

City Council of the
City of Monterey Park
December 3, 2024
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However, the Trust's operation and management of the Site, although it is a non-conforming use, and future use of the Site should not be hindered by this change in zoning, especially in the Trust's ongoing search for uses on the Site that could be beneficial to the future and continuing remediation costs, such as solar energy or battery storage.

We appreciate the opportunity to advise the City Council the concerns the Trust has with respect to the rezoning of the Site.

Very truly yours,

LAW OFFICE OF CYNTHIA BELL

A handwritten signature in blue ink that reads "Cynthia Bell". The signature is fluid and cursive, with the first name "Cynthia" being larger and more prominent than the last name "Bell".

Cynthia A. Bell

cc: w/enclosure

Beth Chow, Planning Director

bchow@monterypark.ca.gov

David Giannotti

Dave Hirsch

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20131041709



Pages:
0023

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Recorder's Office, Los Angeles County,
California

07/16/13 AT 08:00AM

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RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

OIL SITE CUSTODIAL TRUST
c/o New Cure, Inc.
2550 Greenwood Avenue
Monterey Park, CA 91755

South Parcel

(Space Above for Recorder's Use Only)

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COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Assessor Parcel Numbers:

**5293-022-001, 5293-022-006, 5293-022-002,
5293-022-033, 5293-022-005 and 5393-022-004**

THIS COVENANT AND AGREEMENT ("Covenant") is made by and between the OIL SITE CUSTODIAL TRUST (the "Covenantor"), the current owner of property situated in the City of Monterey Park, County of Los Angeles, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the DEPARTMENT OF TOXIC SUBSTANCES CONTROL (the "Department"). Pursuant to Civil Code Section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code Section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree pursuant to Civil Code Section 1471 and Health and Safety Code Section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, Section 67391.1. The provisions of this Covenant shall be for the benefit of, and shall be enforceable by, the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ("U.S. EPA"), as a third party beneficiary pursuant to general contract law, including, but not limited to, Civil Code Section 1559.

1883 ACCM-21

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ARTICLE I

STATEMENT OF FACTS

1.01. The Property is part of the Operating Industries, Inc. Superfund Site ("OII Site") as such term is defined in CD8 defined below, which the U.S. EPA, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in May 1986. (Assessor Parcel Numbers: 5293-022-001, 5293-022-006, 5293-022-002, 5293-022-033, 5293-022-005 and 5393-022-004.)

1.02. In two Records of Decision ("RODs"), the Record of Decision for the Gas Migration Control and Landfill Cover Operable Unit of the OII Site, dated September 30, 1988 and amended on September 28, 1990, and the Final Record of Decision ("Final ROD") for the OII Site, dated September 30, 1996, the U.S. EPA selected the final remedial action for the OII Site ("Remedial Action").

1.03. The Remedial Action and other response actions (collectively, the "Response Actions") for the OII Site have been or are being implemented or may, in the future, be implemented under the oversight of the U.S. EPA and the Department, pursuant to consent decrees entered by the United States District Court.

1.04. The remedial actions for the OII Site have been implemented under the oversight of the U.S. EPA and the Department.

1.05. Site remediation included the following:

- (a) Stabilization of the north slope of the Property and construction of a monocover over that area of the Property;
- (b) Construction of a geosynthetic clay liner ("GCL") cover system over the top deck of the Property and a monocover system over the remainder of the Property;
- (c) Construction of appropriate storm water features over the Property;
- (d) Development and installation of cover drainage systems, including retention basins and other associated piping;

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- (e) Installation of landfill gas systems including landfill gas collection and monitoring wells and reconveyance lines;
 - (f) Development of long-term operation and maintenance for the above and all other related components of the remediation in accordance with the Response Actions and CD8.

1.06. The restrictions set forth in this Covenant are necessary to fully implement the Remedial Actions described in the RODs and to protect human health by preventing disruption of the remedial systems. A human health risk assessment was completed at the OII Site in 1996. Specific and essential elements of the human health risk assessment are described in Section 5 of the Final ROD.

1.07. Hazardous substances, as defined in section 25316 of the California Health and Safety Code ("H&SC"), (within Chapter 6.8, Division 20 of the H&SC), and in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA") (42 USC 9601(14)); and also Title 40 Code of Federal Regulations ("CFR") parts 261.3 and 302.4, remain on the Property. These substances are also hazardous materials as defined in the Health and Safety Code section 25260(d). These contaminant(s) include, but are not limited to: 1,4-dioxane, trichloroethene (TCE), tetrachloroethane (PCE), cis-1,2-dichloroethene, mercury, nickel, selenium, vinyl chloride, 1,1 dichloroethane, benzene and lead.

ARTICLE II

DEFINITIONS

2.01. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA or a state agency acting pursuant to a contract or cooperative agreement executed under CERCLA Section 104(d)(1), 42 U.S.C. 9604(d)(1), or designated pursuant to a CERCLA Memorandum of Agreement entered into under subpart F of the NCP (40 C.F.R. 300.505) may be designated CERCLA Lead Agency.

2.02. Consent Decree.

2.02.01. "CD8" means that certain Eighth Partial Consent Decree, CV 01-11162 filed in the United States District Court, Central District of California, Western Division, in that certain

action entitled *United States of America, et al. v. Chevron Environmental Management Company, et al.*

2.03. Department. "Department" means the California Department of Toxic Substances Control and includes its successor departments or agencies, if any.

2.04. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any Section of this Covenant.

2.05. Improvements. "Improvements" include, but are not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.06. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.07. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.08. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to, or an ownership interest in, all or any portion of the Property.

2.09. Remedial Systems. "Remedial Systems" shall mean the remedial equipment and systems located on the Property, including all the items identified in Section 1.05.

2.10. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code Section 25355.5(a)(1)(C) and Civil Code Section 1471; (b) inures to the benefit of and passes with each and every portion of the

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Property, (c) is for the benefit of and enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Health and Safety Code Section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code Section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, sublease, assignment or other transfer of the Property, or any portion thereof, the owner, lessor, sublessor, assignor or other transferor shall give the buyer, lessee, sublessee, assignee or other transferee written notice that hazardous substances are located on or beneath the Property, in substantially the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A COVENANT TO RESTRICT USE OF PROPERTY AND ENVIRONMENTAL RESTRICTIONS DATED _____, 2013, RECORDED IN THE OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA ON _____, 2013, AS INSTRUMENT NO. _____ ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AS AN INTENDED THIRD-PARTY BENEFICIARY.

3.04. Incorporation into Deeds and Leases. The Covenant and its Environmental Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, assignments, or other transfers of all or any portion of the Property that are hereafter executed or renewed.

3.05. Conveyance of Property. The Owner shall provide notice to the Department and U.S. EPA not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department and U.S. EPA shall not, by reason of this Covenant, have any authority to approve, disapprove, or otherwise affect any proposed conveyance by the Covenantor or Owner. The Owner recognizes that any sale of any ownership interest will be subject to this Covenant.

3.06 Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent

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Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV

RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation;
- (b) A hospital for humans;
- (c) A public or private school for persons under 21 years of age; or
- (d) A day care center for children.

4.02. Prohibited Activities. Except as required or otherwise provided in CD8 and unless a change is authorized pursuant to Article VI of this Covenant, the following activities are specifically prohibited:

- (a) Raising of food (e.g., cattle or food crops);
- (b) Drilling for drinking water, oil, or gas;
- (c) Any extraction of groundwater for purposes or uses other than implementation of and compliance with CD8;
- (d) Any activity that results in a release or threat of release of any hazardous substance that either: (i) is subject to reporting requirements pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), or (ii) otherwise prompts a Response Action by the U.S. EPA or the Department;
- (e) Any activity of a nature that would require issuance of a permit by the U.S. EPA or the State of California under the Resource Conservation and Recovery Act ("RCRA") or the California Hazardous Waste Control Law;

(f) Any activity that interferes with or adversely affects, or that the U.S. EPA determines (after notice to, and consultation with, Department) may interfere with or adversely affect the integrity or protectiveness of any of the Property remedial measures or Response Actions, including, but not limited to, the inauguration or continued effectiveness of any institutional controls for the Property;

(g) Any activity that causes or contributes, or that the U.S. EPA determines (after notice to, and consultation with, Department) may cause or contribute, to the migration or release of any Hazardous Substances; and

(h) Any construction or excavation activities on any portion of the Property that may disturb any structure or activity implemented as a part of the Remedial Action, except in compliance with CD8.

4.03. Non-Interference with Remedial Systems.

(a) All uses of the Property shall preserve the integrity and physical accessibility of the Remedial Systems including, but not limited to, the remedial moncover, landfill gas collection system, groundwater extractions wells, and groundwater monitoring wells. Activities that may interfere with or affect the integrity of the Remedial Systems, as constructed pursuant to the RODs, shall not be conducted on the Property, except as authorized in subparagraph (b) below.

(b) Except as authorized by CD8 and the operation and maintenance relating to the Property, the following activities shall not occur without prior written approval by U.S. EPA after notice and opportunity to comment by the Department:

- (i) Construction or modifications that impact any of the Remedial Systems;
- (ii) Interference with or alterations of the grading, vegetation, or drainage controls; and
- (iii) Penetrations or interferences (including, but not limited to, utility trench excavations, excavations for planting trees or large bushes, foundation excavations, and foundation piles) within the moncover or potentially impacting any Remedial Systems.

(c) The Owner shall notify U.S. EPA and the Department of each of the following: (i) the type, cause, location and date of any damage to any of Remedial Systems; and (ii) the type and

date of repair of such damage. Notification to U.S. EPA and the Department shall be made as provided below within ten (10) business days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of the Covenantor and all other Owners and Occupants.

(d) New groundwater extraction, injection or monitoring wells shall not be constructed unless prior written approval for such is obtained from U.S. EPA after notice and opportunity to comment by the Department.

(e) The Owner will provide a copy of this Covenant to all easement holders for all or any portions of the Property.

(f) The Owner shall maintain site access controls, such as gates, fencing, and barriers, as well as warning signs and other necessary information, in and around the Property, in accordance with CD8.

4.04. Access for the Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the terms and conditions of CD8 as deemed necessary in order to protect the public health or safety, or the environment. Nothing in this Covenant is intended to limit any rights of access that the Department may have pursuant to federal or state law.

4.05. Access for Implementing Operation and Maintenance and Five Year Reviews. As provided in and consistent with CD8, the entity or person responsible for implementing the Operation and Maintenance Plans and Five Year Reviews shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Plans and Five Year Reviews until the CERCLA Lead Agency determines that no further operation and maintenance or Five Year Review is required.

4.06. Access for U.S. EPA. Nothing in this Covenant shall limit or otherwise affect the U.S. EPA's right of entry and access to the Property under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; or federal law.

4.07. Inspection and Reporting Requirements. The Covenantor shall conduct all inspections of the Property and reporting, including, without limitation, annual reports, to the Department in accordance with the requirements of CD8.

ARTICLE V

ENFORCEMENT

5.01. Enforcement-Covenantor. Failure of the Covenantor to comply with this Covenant shall be grounds for the Department to enforce the terms, conditions, obligations and Environmental Restrictions contained herein. The Department may enforce such failure or any violation of this Covenant pursuant to the rights of enforcement set forth in CD8.

5.02. Enforcement-Owner or Occupant. Failure of any Owner or Occupant to comply with this Covenant shall be grounds for the Department to enforce the terms, conditions, obligations and Environmental Restrictions contained herein. The Department may enforce such failure or any violation of this Covenant pursuant to the laws of the State of California. The Department may also enforce the Environmental Restrictions contained herein pursuant to its rights under (i) Federal law, or (ii) the decree of a Federal Court.

5.03. Enforcement Rights of U.S. EPA as a Third Party Beneficiary. U.S. EPA, as a third party beneficiary, has the right to enforce the Environmental Restrictions contained herein.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code Section 25233 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No variance may be granted under this Section without prior notice to and opportunity to comment by U.S. EPA.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the terms of this Covenant as they apply to all or any portion of the Property, except for the Prohibited Uses and Prohibited Activities set forth in Sections 4.01 and 4.02 which shall continue in effect in perpetuity. Such application shall be made in accordance with Health and Safety Code Section 25234 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No termination may be granted under this Section without prior notice to and opportunity to comment by U.S. EPA. Any such termination must be in compliance with the terms and conditions of CD8.

6.03. Term. Unless ended in accordance with Section 6.02, by law, or by the Department in the exercise of its discretion, after providing notice to and an opportunity to comment by U.S. EPA, this Covenant shall continue for the term set forth in CD8, except with respect to Section 4.01 Prohibited Uses and Section 4.02 Prohibited Activities, which shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No Dedication or Taking. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under state or federal law.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Los Angeles within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

Owner/Covenantor:

OII Site Custodial Trust
c/o New Cure, Inc.
2550 Greenwood Avenue
Monterey Park, California 91755
Attn: David Hirsch
Telephone: (323) 720-9775

With a copy to:

David A. Giannotti
Attorney at Law
307 N. Orange Drive
Los Angeles, California 90036
Telephone: (310) 938-9008

U.S. EPA:

U. S. Environmental Protection Agency
Office of Regional Counsel ORC-3
75 Hawthorne Street
San Francisco, California 94105
Attention: Janet Magnuson, Esq.
Telephone: (415) 972-3887

DEPARTMENT:

Department of Toxic Substances Control
Brownsfield and Environmental
Restoration Program
9211 Oakdale Avenue
Chatsworth, California 91311
Attention: Stephen W. Lavinger, Branch Chief
Telephone: (818) 717-6528

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this Section.

7.04. Partial Invalidity. If any portion of this Covenant's terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant, or the application of such portions to persons or circumstances other than those to which it is found to be invalid, shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effectuate the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

7.06. Statutory References. All statutory and regulatory references include successor provisions.

7.07. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

7.08. California Law. This Covenant shall be governed, performed and interpreted under the laws of the State of California.

7.09. No Delegation. Nothing set forth in this Covenant shall be construed to be a delegation of any authorities of the Department under any statute or regulation.

7.10. Counterparts. The Parties may execute this Covenant in two or more counterparts, which shall, in the aggregate, be deemed to have been jointly executed by all Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

7.11. Reserved Rights of Covenantor: The Covenantor hereby reserves unto itself, its successor and assigns, all rights and privileges in and to and the use of the Property which are not incompatible with the easements, rights, and restrictions granted herein.

*Signature Page to Covenant to Restrict Use of Property
Environmental Restrictions on Next Page*

*Signature Page to Covenant to Restrict Use of Property
Environmental Restrictions*

IN WITNESS WHEREOF, the Parties have executed this Covenant on the dates indicated below.

“Covenantor”

OII SITE CUSTODIAL TRUST

By David Z. Hirsch
David Hirsch, Trustee

Date: June 21, 2013

“Department”

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL,

By: _____
Title: _____

Date: _____, 2013

*Signature Page to Covenant to Restrict Use of Property
Environmental Restrictions*

IN WITNESS WHEREOF, the Parties have executed this Covenant on the dates indicated below.

“Covenantor”

OII SITE CUSTODIAL TRUST

By _____
David Hirsch, Trustee

Date: _____, 2013

“Department”

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL,

By: SW Lauinger STEPHEN W LAUINGER
Title: BRANCH CHIEF

Date: July 9, 2013

(For use by Covenantor)

STATE OF CALIFORNIA)
)
COUNTY OF LA)

On 6-21, 2013 before me, MAY YEE-MASTERSON a Notary Public, personally appeared DAVID HIRSCH, who proved to me on the basis of satisfactory evidence to be the person~~s~~ whose name~~s~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity~~(ies)~~, and that by his/~~her~~/~~their~~ signature~~s~~ on the instrument the person~~s~~, or the entity upon behalf of which the person~~s~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing Paragraph is true and correct.

WITNESS my hand and official seal.



MAY YEE-MASTERSON
Signature of Notary Public

(This area for notarial seal)

(For use by Department)

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On 07/09/2013, 2013 before me, Tae Sung Kim, a Notary Public, personally appeared Stephen Willard Lavinger, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing Paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public



(This area for notarial seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Monterey Park, County of Los Angeles, State of California, described as follows:

PARCEL 1: 5293-022-001

PART A:

THAT PORTION OF LOT 2 OF TRACT 10063, PARTLY IN THE CITY OF MONTEREY PARK AS SHOWN ON MAP RECORDED IN BOOK 179 PAGES 32 TO 34 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED ON THE WEST AND NORTHWEST BY THE CENTERLINE OF GREENWOOD AVENUE AS DESCRIBED IN THE DEED TO THE CITY OF MONTEREY PARK RECORDED ON SEPTEMBER 7, 1955 AS DOCUMENT NO. 3054 IN BOOK 48885 PAGE 6, OFFICIAL RECORDS, IN SAID RECORDER S OFFICE, AND BOUNDED ON THE NORTH BY THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED AS PARCEL 2 IN CASE NO. 646771 OF THE SUPERIOR COURT OF SAID STATE IN AND FOR SAID COUNTY, A COPY OF THE LIS PENDENS OF SAID CASE BEING RECORDED JULY 15, 1955, AS DOCUMENT NO. 4673 IN BOOK 48372 PAGE 121, OFFICIAL RECORDS; THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL 2, NORTH 75°01 10" EAST 171.61 FEET, NORTH 81°40 26" EAST 302.03 FEET AND NORTH 66°29 12" EAST 120.09 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL 2; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL NORTH 0°07 40" EAST 173.16 FEET TO A LINE PARALLEL WITH AND DISTANT NORTHERLY 150 FEET, MEASURED AT RIGHT ANGLES FROM THAT COURSE HEREINBEFORE DESCRIBED AS HAVING A BEARING OF NORTH 75°01 10" EAST; THENCE ALONG SAID PARALLEL LINE NORTH 75°01 10" EAST 217.97 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 4,000 FEET; THENCE ALONG SAID CURVE EASTERLY 1210.25 FEET, THROUGH A CENTRAL ANGLE OF 17°20 08"; THENCE TANGENT TO SAID CURVE SOUTH 89°38 42" EAST 1028.72 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 2,000 FEET; THENCE ALONG SAID CURVE EASTERLY 648.31 FEET, THROUGH A CENTRAL ANGLE OF 18°34 22"; THENCE TANGENT TO SAID CURVE NORTH 73°46 56" EAST TO THE EASTERLY LINE OF SAID LOT 2.

EXCEPT THAT PORTION THEREOF LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 1 OF SAID TRACT 10063.

ALSO EXCEPT ANY PORTION LYING NORTHERLY OF THE SOUTHERLY LINE OF POMONA FREEWAY, DESCRIBED IN DEEDS RECORDED SEPTEMBER 2, 1958, AS INSTRUMENT NO. 1410 IN BOOK D203 PAGE 268, OFFICIAL RECORDS, AND AS PARCEL 2 IN DOCUMENT RECORDED JULY 15, 1955 AS INSTRUMENT NO. 4673

IN BOOK 48372, PAGE 121, OF OFFICIAL ALSO EXCEPT THEREFROM ANY PORTION LYING NORTHERLY OF THE SOUTHERLY LINE OF THE LAND DESCRIBED IN DEED RECORDED IN BOOK D203, PAGE 268, OFFICIAL RECORDS AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN OR UNDER SAID PREMISES, PROVIDED, HOWEVER, THAT THE RIGHT OF SURFACE ENTRY AND USE FOR THE PURPOSE OF EXPLORING FOR DEVELOPING AND PRODUCING THE SAME SHALL BE LIMITED TO ONE ACRE OUT OF EVERY 20 ACRES HEREBY CONVEYED WITH THE NECESSARY RIGHTS OF WAY FOR INGRESS AND EGRESS THERETO. SAID GRANTOR TO SELECT SAID SURFACE ACREAGE UPON DEMAND FROM GRANTEE IN SUCH MANNER AS TO INTERFERE AS LITTLE AS REASONABLY POSSIBLE WITH THE OPERATIONS OF GRANTEE, AS RESERVED BY TITLE INSURANCE AND TRUST COMPANY, A CORPORATION, AS TRUSTEE UNDER THE WILL OF HELEN MAY WHEELER, DECEASED, IN A DEED RECORDED JANUARY 11, 1957 IN BOOK 53337 PAGE 406. OFFICIAL RECORDS.

ALSO EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN OR UNDER SAID PREMISES, PROVIDED, HOWEVER, THAT THE RIGHT OF SURFACE ENTRY AND USE FOR THE PURPOSE OF EXPLORING FOR, DEVELOPING AND PRODUCING THE SAME SHALL BE LIMITED TO ONE ACRE OUT OF EVERY 20 ACRES HEREBY CONVEYED WITH THE NECESSARY RIGHTS OF WAY FOR INGRESS AND EGRESS THERETO. SAID GRANTOR TO SELECT SAID SURFACE ACREAGE UPON DEMAND FROM GRANTEE IN SUCH MANNER AS TO INTERFERE AS TITLE AS REASONABLY POSSIBLE WITH THE OPERATIONS OF GRANTEE, AS RESERVED BY HENRY H. WHEELER, A MARRIED MAN, IN A DEED RECORDED JANUARY 11, 1957 IN BOOK 53337, PAGE 403 OFFICIAL RECORDS.

PARCEL B:

THAT PORTION OF LOT 2 OF TRACT NO. 10063, AS SHOWN ON MAP RECORDED IN BOOK 179, PAGES 32 TO 34 INCLUSIVE, OF MAP, IN THE OFFICE OF THE

COUNTY RECORDER OF SAID COUNTY, ACQUIRED BY THE STATE OF CALIFORNIA BY DEED (STATE PARCEL NO. 220) RECORDED IN BOOK D203, PAGE 268 OF OFFICIAL RECORDS, IN SAID OFFICE, DESCRIBED AS FOLLOWS: BEGINNING AT THE WESTERLY TERMINUS OF TRACT CERTAIN COURSE DESCRIBED AS "N 70° 31' 00" E., 249.18 FEET" IN SAID DEED; THENCE ALONG SAID CERTAIN COURSE N 70° 31' 00" E, 229.18 FEET; THENCE S 85° 03' 26" W, 350.36 FEET TO A POINT IN THAT CERTAIN COURSE DESCRIBED AS "S. 70° 49' 28" E., 262.81 FEET" IN SAID DEED, DISTANT ALONG LAST SAID CERTAIN COURSE N 70° 49' 28" W., 140.81 FEET FROM THE EASTERLY TERMINUS THEREOF; THENCE ALONG LAST SAID CERTAIN COURSE S 70° 49' 28" E, 140.81 FEET TO THE POINT OF BEGINNING.

PARCEL 2: 5293-022-006

THAT PORTION OF LOT 2 OF TRACT 10063, PARTLY IN THE CITY OF MONTEREY PARK, AS SHOWN ON MAP RECORDED IN BOOK 179 PAGES 32 TO 34 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED ON THE WEST AND NORTHWEST BY THE CENTERLINE OF GREENWOOD AVENUE AS DESCRIBED IN DEED TO THE CITY OF MONTEREY PARK RECORDED ON SEPTEMBER 7, 1955, AS DOCUMENT NO. 3054 IN BOOK 48885 PAGE 6, OFFICIAL RECORDS, IN SAID RECORDER S OFFICE, AND BOUNDED ON THE NORTH BY THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 1 OF SAID TRACT 10063.

EXCEPT THAT PORTION OF SAID LOT 2, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 2; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT.

- 1. NORTH 42°23'45" WEST 354.65 FEET; THENCE
- 2. SOUTH 84°59'48" EAST 415.83 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SAID LOT 2; THENCE.
- 3. SOUTH 37°48'57" WEST 285.63 FEET ALONG SAID SOUTHEASTERLY LINE TO THE POINT OF BEGINNING.

ALSO EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN OR UNDER SAID PREMISES, PROVIDED, HOWEVER, THAT THE RIGHT OF SURFACE ENTRY AND USE FOR THE PURPOSE OF

EXPLORING FOR, DEVELOPING AND PRODUCING THE SAME SHALL BE LIMITED TO ONE ACRE SOUTH OF EVERY 20 ACRES HEREBY CONVEYED WITH THE NECESSARY RIGHTS OF WAY FOR INGRESS AND EGRESS THERETO. SAID GRANTOR TO SELECT SAID SURFACE ACREAGE UPON DEMAND FROM GRANTEE IN SUCH MANNER AS TO INTERFERE AS LITTLE AS REASONABLY POSSIBLE WITH THE OPERATIONS OF GRANTEE, AS RESERVED BY TITLE INSURANCE AND TRUST CO., A CORPORATION, AS TRUSTEE UNDER THE WILL OF HELEN MAY WHEELER, DECEASED IN A DEED RECORDED JANUARY 11, 1957 IN BOOK 53337 PAGE 406, OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN OR UNDER SAID PREMISES, PROVIDED, HOWEVER, THAT THE RIGHT OF SURFACE ENTRY AND USE FOR THE PURPOSE OF EXPLORING FOR, DEVELOPING AND PRODUCING THE SAME SHALL BE LIMITED TO ONE ACRE OUT OF EVERY 20 ACRES HEREBY CONVEYED WITH THE NECESSARY RIGHTS OF WAY FOR INGRESS AND EGRESS

THERETO, SAID GRANTOR TO SELECT SAID SURFACE ACREAGE UPON DEMAND FROM GRANTEE IN SUCH MANNER AS TO INTERFERE AS LITTLE AS REASONABLY POSSIBLE WITH THE OPERATIONS OF GRANTEE, AS RESERVED BY HENRY H. WHEELER, A MARRIED MAN, IN A DEED RECORDED JANUARY 11, 1957 IN BOOK 53337 PAGE 403, OFFICIAL RECORDS.

PARCEL 3: 5293-022-002, 5293-022-003 AND 5293-022-005

THOSE PORTIONS OF LOTS 1 AND 2 OF TRACT 10063, IN THE CITY OF MONTEREY PARK, AS PER MAP RECORDED IN BOOK 179 PAGE 32 ET SEQ OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE POMONA FREEWAY AS DESCRIBED IN DOCUMENT RECORDED SEPTEMBER 2, 1958 AS INSTRUMENT NOS. 1411, 1412 AND 1413, OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION OF SAID LAND LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT 2, DISTANT NORTH 42° 23 55" WEST 354.65 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 2, THENCE NORTH 18° 19 10" EAST 224.05 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1500.00

FEET, THENCE NORTHERLY ALONG SAID CURVE 339.24 FEET; THENCE NORTH 31° 16 39" EAST 1096.90 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1000.00 FEET; THENCE NORTHERLY ALONG SAID CURVE 513.54 FEET; THENCE NORTH 0° 08 05" EAST 842.83 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1000.00 FEET; THENCE NORTHERLY ALONG SAID CURVE 275.70 FEET; THENCE NORTH 15° 55 53" EAST TO THE SOUTHEASTERLY LINE OF SAID LAND DESCRIBED IN THE DEED TO THE SOUTHERN CALIFORNIA EDISON COMPANY RECORDED ON DECEMBER 31, 1948, IN BOOK 29397 PAGE 296 OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN OR UNDER SAID LAND, BUT PROVIDING THAT THE RIGHT OF EXPLOITATION THEREOF SHOULD BE LIMITED TO ONE MORE OUT OF EVERY 20 ACRES AS RESERVED BY HENRY H. WHEELER IN DEED RECORDED JULY 6, 1953.

PARCEL 4: 5293-022-004

THAT PORTION OF LOT 2 OF TRACT NO. 10063, AS SHOWN ON MAP RECORDED IN BOOK 179, PAGES 32, 33 AND 34 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED AS S. 63° 49 24" W., 298.21 FEET IN THE SOUTHERLY BOUNDARY OF THE PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED IN BOOK D203, PAGE 282 OF OFFICIAL RECORDS IN SAID OFFICE; THENCE ALONG SAID COURSE, N. 63° 49 24" E., 298.21 FEET TO THE NORTHEASTERLY TERMINUS THEREOF; THENCE N. 85° 25 07" W., 272.04 FEET; THENCE S. 78° 06 09" W., 162.23 FEET TO THE NORTHWESTERLY TERMINUS OF THE COURSE DESCRIBED IN SAID DEED AS HAVING A LENGTH OF 201.80 FEET; THENCE ALONG SAID LAST MENTIONED COURSE, S. 53° 34 34" E., 201.80 FEET TO THE POINT OF BEGINNING.

EXCEPTING ANY AND ALL RIGHTS OF INGRESS TO OR EGRESS FROM THE LAND HEREIN CONVEYED OVER AND ACROSS THE NORTHERLY LINE THEREOF AS EXCEPTED AND RESERVED BY THE STATE OF CALIFORNIA IN DEED RECORDED MAY 26, 1967, IN BOOK D3654, PAGES 670 AND 671 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

ALSO EXCEPT THEREFROM, ALL OIL, MINERALS, NATURAL GAS AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, THAT MAY BE WITHIN OR UNDER THE HEREIN CONVEYED PARCEL OF LAND, AND THE RIGHTS THERETO, TOGETHER WITH CERTAIN OTHER CONDITIONS, AS EXCEPTED AND RESERVED IN SAID DEED TO THE STATE OF CALIFORNIA RECORDED IN BOOK D203, PAGE 282 OF OFFICIAL RECORDS.