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August 8, 2012

Geralyn L. Skapik
Skapik Law Group
5861 Pine Avenue, Suite A-1
Chino Hills, CA 91709

Re: *Open Space Legal Defense Fund v. City of Whittier, et al.*
Case Number BS 128995

Dear Ms. Skapik:

This is to inform you that the County of Los Angeles ("County"), through the Executive Office of the Board of Supervisors, recently concluded a second investigation to determine whether a possible violation of the County Lobbyist Ordinance by Esther Feldman, Feldman & Associates, Community Conservancy International, and the City of Whittier occurred. As explained in the enclosed written findings, the Executive Office concluded that Esther Feldman, Feldman & Associates, and the City of Whittier failed to register within 10 days of May 25, 2010, and subsequently failed to file quarterly reports.

Pursuant to Section 2 of the Settlement Agreement ("Agreement") dated February 6, 2012, the County has fully complied with the terms of the Agreement and as such, Open Space is now required to dismiss the Fifth Cause of Action within 15 days of this notice.

Please contact me if you have any questions.

Very truly yours,

JOHN F. KRATTLI
County Counsel

By


RICHARD GIRGADO
Deputy County Counsel
Government Services Division

RG:htb

Enclosure

Lobbyist Finding-Esther Feldman

PURPOSE

The Executive Office received several letters beginning in November 2010 from GERALYN L. SKAPIK, an attorney with the Claremont Land Group, representing the interest of the Open Space Legal Defense Fund, requesting that the Executive Office investigate an alleged County Lobbyist Code Violation by Esther Feldman, Feldman & Associates, Community Conservancy International (CCI), and the City of Whittier.

Ms. Feldman and Feldman & Associates registered as a County Lobbyist and a County Lobbying Firm, respectively, with Los Angeles County on December 17, 2010 each listing December 16, 2010 as their qualifying date as lobbyist entities. If Esther Feldman or Feldman & Associates met the definition of a County Lobbyist or County Lobbying Firm prior to December 7, 2010, a violation would have occurred when she failed to register within the 10 day deadline established in the County Lobbyist Ordinance.

The City of Whittier registered on December 20, 2010 listing December 20, 2010 as its qualifying date. If the City of Whittier was found to have qualified prior to December 10, 2010, it too would have violated the Ordinance.

The Executive Office Lobbyist Division conducted an investigation in early 2011. That investigation determined that the allegations made were not substantiated. However, in September 2011, it was discovered that the administrative record did not contain a May 25, 2010 agreement. This agreement allowed payments to Ms. Feldman, including an initial payment of \$15,000 (a start up fee) upon execution of the agreement.

As a result, the Executive Office was tasked with conducting a second investigation and obtaining all relevant documents and information that might not have been provided earlier and determining whether this additional information proved that a Lobbyist Code Violation had indeed occurred.

SCOPE

The scope of this second investigation included Ms. Feldman, Feldman & Associates, Community Conservation Solutions ("CCS") formerly Community Conservancy International ("CCI"), and the City of Whittier.

It further included all the agreements and amendments thereto between the entities listed above from the time period of September 2, 2009 thru July 7, 2011.

BACKGROUND/LEGAL PROVISIONS

The determination of whether Esther Feldman and Feldman & Associates was a County Lobbyist and County Lobbying Firm, respectively, prior to December 7, 2010, and whether the City of Whittier was a County Lobbyist Employer prior to December 10, 2010, hinges on the definition of a "County Lobbyist" and more specifically, on when an individual meets the threshold of becoming a lobbyist.

To determine when the threshold is met, it is necessary to refer to section 2.1 of the County's Lobbyist Rules ("Rules"). This section defines what constitutes a County Lobbyist. Although section 2.1, subdivision A, of the Rules adopts the definition of County Lobbyist under the County Lobbyist Ordinance, it further expanded its interpretation by providing a two prong test to determine who is a County Lobbyist. If one of the two tests is met, the person shall be considered a County Lobbyist. Section 2.1 of the Rules provides as follows:

2.1 Lobbyist.

A. A lobbyist is any individual who is employed, contracts or otherwise receives compensation, other than reimbursement for reasonable travel expenses, to communicate directly, or through agents, employees or subcontractors, with any County official for the purpose of influencing official County action, if a substantial or regular portion of the activities for which he or she receives such compensation is for the purpose of influencing official County action.

B. To determine whether or not the activities for which an individual is compensated for the purpose of influencing official County action constitutes "substantial" or "regular," two tests shall be applied. A person who meets the requirements of either of the following tests shall be considered a County lobbyist.

- 1. The compensation test: The person receives or becomes entitled to receive at least \$1,000 in compensation in any calendar month for influencing official County action. Compensation received by a full time employee engaged primarily to perform services other than influencing official action, or for administrative testimony, shall not be included in computing the amount of compensation in this test.***
- 2. The contact test: The person receives or becomes entitled to receive any amount of compensation for engaging in direct communication, other than administrative testimony, with County officials for the purpose of influencing official County action on at least five separate occasions in any three consecutive calendar months.***

Under the Rules, a County Lobbying Firm and County Lobbyist Employer are defined as follows:

2.2 Lobbying or lobbyist firm means a business entity, including an individual lobbyist, which receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing official action on behalf of any other person, if either any partner, owner, officer or employee of the business entity is a lobbyist, or a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing official County action. Whether or not the activities for which such entity or individual is compensated for the purpose of influencing official County action constitutes "substantial" or "regular", and therefore, the entity or individual is considered to be a lobbying firm, shall be determined pursuant to the tests set forth in Subsection 2.1 of these Rules.

2.3 Lobbyist employer is a person or entity, other than a lobbying firm, who, for economic consideration other than reimbursement for reasonable travel expenses, either employ one or more lobbyists or contracts for the services of a lobbyist or lobbying firm for the purpose of influencing official County action.

Agreements/Amendments

Between September 2, 2009 and July 2011 there were four agreements and six amendments entered into by the entities. They are as follows:

- **First Agreement** - September 2, 2009 - City of Whittier and CCI for Consulting Services to the City of Whittier regarding Proposition A reimbursement in connection with Unocal and Chevron properties. The compensation on this agreement was for an amount not to exceed \$10,000.
 - **Amendment** - May 18, 2010 - City of Whittier and CCI for the same services as above but increasing the amount of the contract by \$5,000.
- **Second Agreement** - May 25, 2010 - City of Whittier and CCI for analysis and review of a proposal by the City of Whittier to conduct oil drilling and related activities in protected open space areas in Puente Hills in the City of Whittier and for preparing a report on its findings. The compensation for performing and completing all services pursuant to Exhibit "A" of this agreement was a grant of \$65,000; one payment, plus expenses not to exceed \$10,000.

In this same agreement, under Exhibit "B", upon approval of the Matrix Oil Conditional Use Permit ("CUP") to Matrix Oil Corporation by the City,

CCI was to commence monitoring the work and provide quarterly reports summarizing observations, concerns or recommendations for improvement. The compensation for performing and completing all services pursuant to Exhibit "B" was for a total amount not to exceed \$125,000.

- **Amendment** - March 11, 2011 - Amends the agreement by changing every reference to CCI to Community Conservation Solutions ("CCS") and adds indemnity language and a confidentiality clause.
- **Amendment** - March 24, 2011 - Amends the scope of services as a result of pending litigation for additional review and analysis of data and increases compensation by \$22,535.
- **Amendment** - May 24, 2011 - Amends the agreement by including additional work related to the report prepared by CCS and sets compensation not to exceed \$6,750.
- **Amendment** - July 7, 2011 - Amends the agreement by including additional work related to the report prepared by CCS and increases compensation by an additional \$12,200.
- **Third Agreement** - May 25, 2010 - City of Whittier and Feldman & Associates for consulting services to the City related to securing approvals needed from the County of Los Angeles for amendment of the City's Proposition A agreement. It specifies that the services be completed on or before twelve months after receipt of all reports and findings from the City on the City's proposal. This agreement further established a monthly retainer in the amount of \$15,000 monthly for 8 months from the effective date of this agreement and a start up fee of \$15,000 to be paid upon execution of the agreement.
 - **Amendment** - March 11, 2011 - Amends the agreement by including indemnity language and a confidentiality clause.
- **Fourth Agreement** - March 24, 2011 - City of Whittier and CCS for technical consulting services on an as needed basis in connection with the CUP application. Compensation not to exceed \$50,000.

In the initial investigation, Geralyn Skapik had only supplied the Executive Office with the September 2, 2009 first agreement; the May 18, 2010 amendment to the September 2, 2009 first amendment; the Exhibit "A" scope of services page from the May 25, 2010 second agreement between Whittier and CCI; and what appeared to be the Exhibit "A" scope of services page from the May 25, 2010 third agreement between Whittier and Feldman & Associates. The Executive Office during the initial investigation was under the mistaken assumption that Geralyn Skapik had supplied all relevant documents. It was not until the second

investigation that all the above agreements and amendments were obtained in their entirety.

REVIEW/FINDINGS

The First, Second, and Fourth agreements and their subsequent amendments dealt with consultation on reimbursement issues, use of Proposition A, the preparation of a report by CCS on its findings, and the monitoring of the CUP application made by Matrix Oil. These agreements and amendments do not contain sufficient evidence to determine whether a Lobbyist Code Violation occurred. The scope of services appeared to be technical in nature and therefore not services which fall within the rules requiring registration under the County Lobbyist Ordinance. The amendments for the Second and Third agreements were entered into after Ms. Feldman registered as a lobbyist on December 17, 2010.

The third agreement between the City of Whittier and Feldman & Associates dated May 25, 2010, does include services that would require lobbyist registration. The "SCOPE OF SERVICES" under Exhibit "A" of said agreement includes "meetings and communications with offices of the Los Angeles County Board of Supervisors and County departments as necessary to present the City's reports and findings and to assist the City in negotiating such amendment." This language clearly demonstrates a requirement for communicating with the County for the purpose of influencing official county action. Further, this agreement under the heading titled Compliance with Law Section Four, contains a reference to registration as a lobbyist if required.

Ms. Feldman received compensation under this agreement in excess of the \$1,000 minimum threshold of the compensation test under the Rules. Our review of the invoices and payment documents revealed that she received at least \$15,000 in a calendar month prior to the completion of any services.

In the initial investigation Ms. Feldman was interviewed on January 18, 2011 in person and answered additional follow up questions over the telephone on February 15, 2011 and February 17, 2011. In this initial questioning she was asked to clarify her activities and her billing to ascertain whether or not she met the definition of a County Lobbyist under the Rules.

During the second investigation, interviews were conducted with representatives of the City of Whittier and Ms. Feldman. Ms. Feldman was interviewed in person with her attorney present on March 8, 2012, and answered additional follow up questions over the telephone on April 23, 2012. In these subsequent interviews, Ms. Feldman was directed to review and interpret all agreements and amendments for purpose, timeline, and scope of each agreement. She was questioned on payments and invoices related to each agreement and amendment. She was also questioned about her reported payments on her lobbyist filings. She explained how the reported totals were calculated. She was also questioned on Section Four of the May 25, 2010 agreement and her interpretation of its applicability. She again was questioned for clarification of the

September 16, 2010 meeting with County Officials. She was also asked about CCI's/CC's report on Proposition A finding. Additional questions also centered on lobbying definitions and scope of services provided and her interpretations. Ms. Feldman was also asked why in the initial investigation she did not inform us of the May 25, 2010 agreements and other amendments not in our possession. She conveyed that she had no way of knowing what was in our possession and that she had not been provided with copies of the documents that were not in our possession.

Under the compensation test included in the Rules an individual qualifies as a lobbyist if that individual "receives or becomes entitled to receive at least \$1,000 in compensation in any calendar month for influencing official county action." In reviewing Ms. Feldman's activities based on the documents and interviews, we found that the Third agreement dated May 25, 2010, along with the related payments, qualified Esther Feldman, her firm Feldman & Associates, and the City of Whittier, as lobbyist entities.

Conclusion

The allegation of violation of the County Lobbyist Ordinance is substantiated. Consequently, Ms. Feldman, Feldman & Associates, and the City of Whittier were required to register as a County Lobbyist, County Lobbying Firm, and County Lobbyist Employer, respectively, within 10 days of the execution of the May 25, 2010 agreement.