

**AGENDA OF THE SPECIAL MEETING OF THE
LOS ANGELES BOARD OF HARBOR COMMISSIONERS 1
WEDNESDAY, JULY 28, 2010 AT 8:30 A.M.
PORT OF LOS ANGELES ADMINISTRATION BUILDING
425 S. PALOS VERDES STREET
SAN PEDRO, CA 90731**

**BOARD OF HARBOR COMMISSIONERS
President Cindy Miscikowski
Vice President Jerilyn López Mendoza
Commissioner Kaylynn L. Kim
Commissioner Douglas P. Krause
Commissioner Joseph R. Radisich**

**A. OPENING STATEMENT – AN OPPORTUNITY FOR MEMBERS OF
THE PUBLIC TO ADDRESS THIS BOARD**

**PERSONS IN THE AUDIENCE MAY ADDRESS THIS BOARD IN
CONNECTION WITH ANY AGENDA ITEM OR DURING THE PUBLIC
COMMENT PERIOD.**

**AS PROVIDED BY THE BROWN ACT, THE BOARD HAS LIMITED
EACH INDIVIDUAL'S SPEAKING TIME TO THREE MINUTES.
ANYONE DESIRING TO SPEAK DURING THE PUBLIC COMMENT
PERIOD IS REQUESTED TO COMPLETE A SPEAKER CARD AND
SUBMIT IT TO THE COMMISSION SECRETARY, VIA THE SERGEANT
AT ARMS, PRIOR TO THE START OF THE MEETING.**

Commission actions, except actions which are subject to appeal or review by the Council pursuant to other provisions of the Charter, ordinance or other applicable law, are not final until the expiration of the next five meeting days of the City Council during which the Council has convened in regular session. If the Council asserts jurisdiction during this five meeting day period the Council has 21 calendar days thereafter in which to act on the matter.

Please note that this agenda is subject to revision in accordance with the Brown Act. In the event the agenda is revised prior to the meeting, Port staff will endeavor to post the revised agenda on the Port's web site (<http://www.portoflosangeles.org>). Updated agendas also will be available in hard copy at the meeting. Live Board meetings can also be heard at: (213) 621-City (Metro), (818) 904-9450 (Valley), (310) 471-City (Westside) and (310) 547-City (Harbor).

As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its programs, services, and activities.

Sign language interpreters, assistive listening devices, and translation services may be provided. To ensure availability, 72-hour advance notice is required. Contact the Commission office at (310) 732-3444.

Interpretes de señas, sistemas auditivos y servicios de traducciones están disponibles. Para asegurar disponibilidad, se requiere solicitarlos con 72 horas de anticipación. Para hacer la solicitud, llame a la oficina de la Comisión al (310) 732-3444.

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B. COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS

C. BOARD REPORT OF THE EXECUTIVE DIRECTOR

REGULAR ITEM #1

Executive Offices

1. Re: RESOLUTION NO. _____ - GAMBOL INDUSTRIES, INC.
MEMORANDUM OF UNDERSTANDING FOR EXCLUSIVE
RIGHT TO NEGOTIATE, DATED JUNE 29, 2009

SUMMARY: On June 29, 2009, the Harbor Department entered into a "Memorandum of Understanding for Exclusive Right to Negotiate" with Gambol Industries, Inc. ("Gambol"), and the Los Angeles Conservancy ("MOU"). Among other things, the MOU created a one-year exclusive negotiating period for Gambol to attempt to convince the Harbor Department to designate the former Southwest Marine premises ("Southwest Marine site") along the Main Channel of the Port of Los Angeles ("POLA") for future use as a shipyard, and then to select Gambol to operate that shipyard.

The MOU establishes how Gambol's proposed shipyard project must be submitted to and acted upon by the Harbor Department:

- ***First, before the end of the one-year exclusive negotiating period, Gambol must submit a "Conceptual Project Description" and a "Proposed Business Plan." The MOU also requires that the Harbor Department and Gambol work collaboratively during that period to try to minimize fill, and to preserve water area of the Berths 243-245 slips at the Southwest Marine site.***
- ***Second, staff must review Gambol's proposed project and provide recommendations in a single report to the Board of Harbor Commissioners ("Board").***
- ***Third, the Board must decide whether to designate the Southwest Marine site for future use as a shipyard. In making this decision, "the Board retains its full discretion to proceed in any manner it deems best at such time."***

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1. (Continued)

- *Fourth, if the Board designates the Southwest Marine site for future use as a shipyard, it then must determine whether facts exist to support findings that issuing a sole-source shipyard lease to Gambol is in the best interests of the Harbor Department.*

The one-year exclusive negotiation period will expire upon the Board action noted in the third item above. Gambol submitted its "Conceptual Project Description" on January 22, 2010. It submitted a portion of its "Proposed Business Plan" on June 28, 2010 and designated the bulk of it confidential. Staff has reviewed both these submittals, and the rest of the information comprising Gambol's proposed project.

As such, the first and second phases of the process above have been completed, triggering the need to commence the third phase. Pursuant to Section 2(g) of the MOU, this report sets forth staff's analysis of Gambol's proposal, and provides recommendations to the Board.

Staff's recommendations are based on significant flaws in Gambol's proposal to preserve water area at the Berths 243-245 slips. That proposal would delay the Main Channel Deepening Project by a minimum of 16 months, and would result in millions of dollars of additional costs, in material violation of fundamental provisions of the MOU. Additionally, such delay would likely impact ongoing terminal developments at the China Shipping and TraPac terminals, resulting in both monetary and operational damage.

Staff's recommendations also are based on Gambol's failure to provide persuasive evidence of the commercial viability of the proposed shipyard. The economic scope of Gambol's misstatement of the tasks necessary to physically build the shipyard it desires – it omits or underestimates close to \$60 million worth of work -- renders the feasibility of its project doubtful. Furthermore, Gambol's business plan does not establish a convincing strategic and financial case for the Harbor Department to depart at this time from its present long-range planning for the site.

On these grounds, which are discussed in detail in the board report, staff recommends that the Board decline to designate the Southwest Marine site for future use as a shipyard at this time, and decline to direct staff to commence lease negotiations with Gambol. The Board should note that such actions would leave the land use of that site and any landfills created thereon through the Main Channel Deepening Project open and available for future designation as the Board sees fit, and would not permanently

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1. (Continued)

foreclose on the possibility of a shipyard use at the Southwest Marine site, or Gambol as its operator. Rather, such actions would end the MOU-created exclusive relationship with Gambol that, for the past year, has required the Harbor Department to entertain in a single proposal, for a single use at the Southwest Marine site. In so doing, they would return land use planning for the Southwest Marine site to the norm consistent with the Charter, the Harbor Department's leasing policy, and the Harbor Department's role as a trustee for public lands, which require land use decisions be made based on a public and wide-ranging assessment of potential uses open to all entities interested in operating within POLA.

Recommendation: Board resolve to (1) decline to designate the Southwest Marine site for future use as a shipyard, pursuant to Section 2(g) of the MOU; (2) in connection with the foregoing, also decline to direct the commencement of negotiations with Gambol for a lease of the Southwest Marine site for purposes of operating a shipyard, also pursuant to Section 2(g) of the MOU; and (3) adopt Resolution No. _____.

D. CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
(Subdivision (b) of Government Code Section 54956.9)

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 regarding subject matter of mediation with Gambol Industries, Inc.

2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Subdivision (a) of Government Code Section 54956.9)

American Trucking Associations, Inc. v. City of Los Angeles, et al., United States District Court Case No. 08-04920-CAS, and United States Court of Appeals for the Ninth Circuit Case No. 08-56503

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D. CLOSED SESSION (Continued)

**3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)**

**City of Los Angeles v. Kinder Morgan, Inc., et al., Los Angeles
Superior Court Case No. NC041463**

**4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)**

**Alice J. Bradfield, et al. v. City of Los Angeles, et al., Los
Angeles Superior Court Case No. BC322640**

**5. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
(Subdivision (b) of Government Code Section 54956.9)**

**Significant exposure to litigation pursuant to subdivision (b)
of Section 54956.9: one case.**