



**DATE: DECEMBER 11, 2014**

**FROM: EXECUTIVE OFFICE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVAL OF THE HARBOR  
COMMUNITY BENEFIT FOUNDATION 2015 OPERATING BUDGET  
AND CONCURRENCE IN THREE BOARD OF DIRECTOR  
SELECTIONS**

**SUMMARY:**

Harbor Community Benefit Foundation (HCBF) is requesting Board of Harbor Commissioner (Board) approval of their proposed operating budget for the 2015 calendar year and concurrence in three selections for the HCBF Board of Directors. HCBF is the nonprofit organization responsible for the development and selection of projects to receive grant funding from the Port Community Mitigation Trust Fund (PCMTF) provided by the City of Los Angeles Harbor Department. On October 17, 2014, HCBF's Board of Directors approved the proposal of the HCBF operating budget for the 2015 calendar year, and the nonprofit now requires Board approval for a release of funds from the PCMTF.

In accordance with the Operating Agreement of the TraPac Memorandum of Understanding (MOU), HCBF has provided the required financial reports and program documentation in support of the budget request. Upon Board approval, the Harbor Department will authorize JP Morgan Private Bank (JPMPB) to transfer a lump sum amount of \$482,000 from the PCMTF to HCBF. This combined with HCBF's projected 2014 surplus of \$29,700, will provide funds for the total requested 2015 Operating Budget of \$511,700. As all PCMTF funds are held by the independent financial manager, JPMPB will be responsible for the funding of this request. Additionally, HCBF will provide the Board prior notice of any reallocation of authorized funds that exceeds 10% of the total annual budget.

As required by the HCBF Bylaws, HCBF also requests the Board's concurrence in the selection of three Directors for the HCBF Board – the Directors selected by the TraPac Appellants with the (1) University of Southern California (USC) Keck School of Medicine and USC Program for Environmental and Regional Equity, (2) the Los Angeles County of Department Public Health, and (3) the University of California, Los Angeles (UCLA), Department of Urban Planning. All three selections are renewals of existing Directors, each to serve a final third term. This resolution recommends the Board's approval of the HCBF 2015 Operating Budget, concurrence in the selections for Board of Director seats E, F, and G, and the delegation of authority and approval of the Executive

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Director as the Board's designee for concurrence of future HCBF Board of Director selections.

**RECOMMENDATIONS:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve the Harbor Community Benefit Foundation Calendar Year 2015 Operating Budget of a not-to-exceed amount of \$511,700, with the condition that Harbor Community Benefit Foundation provide the Board of Harbor Commissioners prior notice of any reallocation within the Harbor Community Benefit Foundation budget that exceeds 10% of the total annual budget;
2. Approve the Harbor Community Benefit Foundation to retain the \$29,700 surplus from the 2014 Operating Budget for the purpose of funding the current request for its 2015 Operating Budget;
3. Authorize the Executive Director or designee to execute a joint letter with Harbor Community Benefit Foundation to approve the distribution of funds in one lump sum payment of \$482,000 from JP Morgan Private Bank to the Harbor Community Benefit Foundation subject to the same condition set forth in Recommendation 1;
4. Concur with the selection by the TraPac Appellants, the University of Southern California Keck School of Medicine, and the University of Southern California Program for Environmental and Regional Equity of Dr. David Sloane as Director E;
5. Concur with the selection by the TraPac Appellants and the Los Angeles County Department of Public Health of Dr. Silva Prieto as Director F;
6. Concur with the selection by the TraPac Appellants and the University of California, Los Angeles, Department of Urban Planning of Sean B. Hecht as Director G;
7. Ratify the selections of Director Seats E, F, and G for the one-year term of May 2013 through May 2014, previously concurred by the Executive Director;
8. Authorize the Executive Director to execute, as the Board's designee under HCBF Bylaws Section 7.1.2. and 7.1.3, the written concurrence with the future selections for Harbor Community Benefit Foundation Board Directors E, F, and G; and
9. Adopt Resolution No. \_\_\_\_\_.

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**DISCUSSION:**

Background/Context - On April 2, 2008, the Board approved a MOU between the City and the TraPac Appellants to resolve an appeal of the certification of the EIR/EIS for the TraPac Container Terminal Project (TraPac) to the Los Angeles City Council. The MOU with the TraPac Appellants included not only the resolution of the appeal on the TraPac EIR/EIS but also addressed the impacts from current and future Port of Los Angeles (Port) operations, including certain anticipated future projects. This MOU established a mechanism for calculation and payment of funds by the City of Los Angeles Harbor Department (Harbor Department) to be designated for mitigation projects arising from Port operations consistent with the Tidelands Trust (Trust) purposes of the Harbor Revenue Fund. In addition the MOU required the creation of a nonprofit entity, the HCBF, to operate the PCMTF and oversee the grant selection and grant-making process.

On October 20, 2010, the Board approved the Operating Agreement to the TraPac MOU (Operating Agreement), between the Harbor Department, TraPac Appellants, and HCBF. The Operating Agreement serves to establish the detailed procedures for the implementation of the TraPac MOU and provides specific details regarding the PCMTF and the role and responsibilities of the nonprofit entity. The HCBF bylaws govern the HCBF, including selection and qualification of its seven Directors (HCBF Board).

Harbor Community Benefit Foundation Operating Budget Requirements – In accordance with Section 5F of the Operating Agreement, HCBF must submit a detailed budget and report to the Board on an annual basis regarding its administrative needs and requirements (Transmittal 1). HCBF must also provide an update on the balance of the PCMTF, as well as report on the progress of its programs funded by the PCMTF in accordance with Section 5C of the Operating Agreement. The Board shall exercise its independent judgment as to the requested budget, may not arbitrarily or unreasonably decline a budget request, and shall provide written findings relating to reasons for any rejection. Upon Board approval, funds may be transferred from the PCMTF to HCBF for the purposes outlined in the approved annual budget.

PCMTF Balance - Through the MOU and Operating Agreement, the Harbor Department provided funds to establish the PCMTF for the purpose of funding appropriate mitigation projects and grants for the communities of Wilmington and San Pedro. On November 21, 2013, the Board approved to transfer the total balance of the PCMTF to the new independent financial manager, J.P. Morgan Private Bank, and the reported balance as of September 30, 2013, was \$7,785,938. Since then, \$475,000 has been transferred to fund HCBF's 2014 Operating Budget, and \$1,056,000 was also transferred to HCBF to

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fund Healthy Harbor and Community Benefit Grants. Additionally, JPMPB reported a PCMTF gain of \$56,954, inclusive of administrative fees, leading to a balance of \$6,311,892, as of September 30, 2014. This does not include the most recent transfer of \$570,000 for Community Benefit Grant Program Round 2 approved by the Board on October 16, 2014.

When HCBF established the investment accounts at JPMPB, it placed the money into three categories, fixed income, alternative assets, and cash/short term investments. At the end of August, the last available statement from JPMPB, 87.7% of the investments were in fixed income. Fixed income is a category of investment that will pay HCBF a stream of income each month. Fixed income investments, in theory, will have the least volatility with respect to the principal invested but given that theoretical lower level of risk, will also have a lower level of return. HCBF has invested in three types of fixed income funds: taxable fund, high-yield, and inflation indexed. In terms of volatility of the asset values of the funds, the taxable and high-yield funds tend to be more changeable. Another 9.9% of the money, approximately \$495,000, is invested in a hedge fund. By definition, this fund will be more volatile, creating more opportunity for gains as well as losses. It is unclear the composition of the fund although JPMPB benchmarks the fund's performance against the Hedge Fund Research Indices Fund of Funds. In the case of the hedge fund, it has returned at the level of the index of 0.5% over three months ended August 31, 2014. In the case of the fixed income funds, the returns have lagged their specified indices and have lost close to \$9,000 in asset value but HCBF has received about \$78,000 in income from this category of investments. HCBF reinvested the income in their respective funds. JPMPB has charged about \$3,000 in management fees, representing approximately 0.16% against the principal amount. It is not known whether these funds in which HCBF has invested have an additional embedded management fee. The annualized rate of return on the funds at JPMPB was approximately 2.5% over the about six-month period.

2014 Operating Expenses – The approved HCBF Operating Budget for 2014 is \$511,700, of which approximately \$482,000 is projected to be spent by the end of the year, as detailed in the submitted financial report (Transmittal 2). Budget savings in 2014 can be attributed to in-house administration of payroll, taxes, insurance, and benefits. It is proposed that the resulting surplus of \$29,700 will be carried over to fund part of the 2015 Operating Budget request.

For its fiscal year (FY) 2013 which is also the calendar year (CY), HCBF expended about \$258,000 in management and general expenses against total program expenses of about \$1,577,000 indicating that the cost to deliver \$1 of service was about \$0.16. In 2014, the projected administrative expenses total about \$225,000 against total program expenses of about \$1,538,000, representing a cost of \$0.15 in administration costs to deliver \$1 of service.

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Proposed 2015 Operating Budget - The proposed HCBF 2015 Operating Budget remains flat at \$511,700 (Transmittal 3). HCBF will maintain its efforts in Community Engagement and Marketing & Sponsorships and anticipates increased costs associated with medical premiums, office rent, and Land Use Study activities. Staff recommends approval of the HCBF 2015 Operating Budget in the amount of \$511,700, with the condition that HCBF provide the Board prior notice of any reallocation within the HCBF operating budget that exceeds 10% of the total annual operating budget. This same condition was imposed by the Board's approval of HCBF 2014 Operating Budget on November 21, 2013; however, to date, no such request from HCBF has needed to come before the Board.

Upon approval, the Harbor Department will authorize JPMPB to transfer \$482,000 from the PCMTF to HCBF. The PCMTF transfer of \$482,000 combined with HCBF's 2014 projected surplus of \$29,700 will constitute the total funding of \$511,700 requested for the HCBF 2015 Operating Budget. The transfer of \$482,000 plus \$570,000 for Community Benefit Grants Program Round 2 will result in a new PCMTF balance of \$5,259,892, exclusive of fees and market value change.

Update on Accounting for Non-Tidelands Activities of HCBF - In March 2012, the Board imposed the condition that the Office of the City Attorney and HCBF work together to determine a method for accounting for any non-Tidelands activities of HCBF. This accounting is needed to ensure that the Tidelands-restricted funds released to HCBF for its operating budget are not used for non-Tidelands purposes, while still allowing HCBF to engage in non-Tidelands activities using separate non-Tidelands funds.

HCBF has since hired law firm Jenkins & Hogin, LLP as its legal counsel. Harbor Department staff and the Office of the City Attorney have discussed the accounting of non-Tidelands activities with HCBF and its counsel multiple times and have also included staff from the State Lands Commission (SLC) in some discussions. The calculation of non-Tidelands activities and the factors on which it will be based, have yet to be formalized. However HCBF and SLC has are in agreement over the current process:

HCBF may only request release of funds from the PCMTF equal to its total proposed operating budget reduced by the projected percentage of non-Tidelands activities. If non-Tidelands activities are estimated to total 5% or less of the budget total request, these activities will be deemed de minimis and will not reduce the allowable budget request. The agreed upon process follows.

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- 1) Prior to HCBF making its annual operating budget requests to the Board of Harbor Commissioners, it shall discuss with representatives of the State Lands Commission an estimated projection of the percentage of its non-Tidelands administrative activities for the upcoming year.
- 2) In conjunction with preparation of its annual audit by its outside auditing firm, HCBF will report its actual percentage of non-Tidelands administrative activities from the current year, and reconcile it with the previous projection. The amount of this reconciliation shall be taken into account as a debit or credit, as the case may be, and applied to the amount of transferred from the PCMTF to HCBF for the following year's annual operating budget. Annual reconciliation based on actual non-Tidelands administrative activities, will be delivered following the conclusion of the most recent fiscal year audit.

In accordance with the above methods of accounting non-Tidelands activities, HCBF performed an internal audit of their FY 2014 administrative activities (9 months actual, 3 months forecast) and determined that there were no non-Tidelands expenditures incurred. This information was shared with the SLC in October 2014, during the review of HCBF's 2014 HCBF financial reports and 2015 budget. HCBF has also provided SLC with a forecast of no non-Tidelands related expenditures for FY 2015.

Annual reconciliation based on actual non-Tidelands administrative activities, was also delivered to the SLC following the conclusion of the most recent fiscal year audit (2013 was completed in May 2014), confirming no non-Tidelands expenditures had been incurred in FY 2013.

HCBF Board of Directors – In accordance with the HCBF Bylaws Section 7.1.2, during the first six years of the HCBF's existence, three of the seven HCBF Directors will be jointly selected by the TraPac Appellants with various entities and concurred upon by the Board.

Director E: This Director shall be jointly selected by an officer of the USC Keck School of Medicine (Keck), and officer of the USC program for Environmental and Regional Equity (PERE), and the TraPac Appellants, with the concurrence of the Board of Harbor Commissioners or its designee.

Director F: This Director shall be jointly selected by an officer of the Los Angeles County Department of Public Health (LADPH) and the TraPac Appellants, with the concurrence of the Board of Harbor Commissioners or its designee.

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Director G: This Director shall be jointly selected by an officer of the Luskin Center at the UCLA Department of Urban Planning (Luskin Center) and the TraPac Appellants, with the concurrence of the Board of Harbor Commissioners or its designee.

Approval of HCBF Board – On May 19, 2011, the Board, in accordance with the HCBF bylaws, concurred with the following selections to fill Board of Director seats E, F, and G.

- TraPac Appellants, Keck, and PERE, selected Dr. David Sloane.
- TraPac Appellants and LADPH selected Dr. Silvia Prieto.
- TraPac Appellants and Luskin Center selected Sean Hecht.

In 2013, the existing Director selections for HCBF Board seats E, F, and G, were approved for term renewals by the respective nominating bodies. HCBF requested Board concurrence and on June 13, 2013, the Executive Director of the Harbor Department signed a written concurrence of these selections. Since the delegation of authority to the Executive Director to make concurrence decisions had not been approved by the Board at that time, Board ratification of the concurrence in these selections is recommended.

On May 19, 2014, the TraPac Appellants and corresponding nominating bodies confirmed a third and final term renewal for Dr. Sloane, Dr. Prieto and Mr. Hecht, as HCBF Board Directors E, F, and G, respectively. Subsequently, HCBF submitted a request of the Board for concurrence of these selections (Transmittal 4). Based on the progress of current HCBF programming, staff recommends Board concurrence with these selections (Transmittals 5 through 7).

Staff also recommends Board delegation of its authority to the Executive Director as its designee to provide future concurrence of HCBF Board of Director selections without Board review. Each HCBF Board Director is allowed to serve three two-year terms for a total of six years. Going forward, HCBF Board seats will be filled on a staggered schedule of annual elections of Director positions E, F and G, to allow for greater oversight and transfer of institutional knowledge. Delegation of Board authority to the Executive Director for concurrence of the selection of these HCBF Board members will help alleviate the number of items on future Board agendas.

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**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of the HCBF 2015 operating budget. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2 (f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

Approval of the proposed budget will support approximately 3 full-time direct jobs in the five-county region.

**FINANCIAL IMPACT:**

On September 30, 2014, the balance of the PCMTF was \$6,311,892. The previously approved HCBF operating budget for 2014 was \$511,700. The proposed HCBF 2015 Operating Budget is flat at \$511,700. This total budget amount consists of a transfer from the PCMTF in the amount of \$482,000 coupled with the projected \$29,700 surplus from the HCBF FY 2014 Operating Budget. There will be no financial impact to the Harbor Department from this transfer as all PCMTF funds are held by HCBF's independent financial manager JPMPB, and JPMPB will be responsible for disbursing such funds upon Board approval of this action.

Independent of HCBF's budget request, the Harbor Department is required to make contributions to the PCMTF for any projects designated in TraPac MOU Exhibit B whose EIRs have been certified by May 31, 2016. The terms of the TraPac MOU Operating Agreement will remain in effect, so long as there is balance in the PCMTF.

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**CITY ATTORNEY:**

The Office of the City Attorney has reviewed and approved the requested transfer of funds from the PCMTF as to form and legality including compliance with the TraPac MOU and Operating Agreement.

**TRANSMITTALS:**

1. 2014 Financial Report
2. 2015 Operating Budget Request
3. 2015 Proposed Operating Budget
4. Request for Concurrence of Board of Directors
5. Resume for Dr. David Sloane
6. Resume for Dr. Silvia Prieto
7. Resume for Sean Hecht

FIS Approval: WSP (initials)  
CA Approval: JSW (initials)

APPROVED:



CYNTHIA M. RUIZ  
Deputy Executive Director, External Relations



EUGENE D. SEROKA  
Executive Director

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