



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the
Board of Harbor Commissioners

DATE: JANUARY 29, 2013

FROM: EXECUTIVE OFFICE

**SUBJECT: RESOLUTION NO. _____ APPROVE 2013 OPERATING
BUDGET FOR THE HARBOR COMMUNITY BENEFIT FOUNDATION**

SUMMARY:

The TraPac Memorandum of Understanding (TraPac MOU) between the TraPac Appellants and the City of Los Angeles Harbor Department (Harbor Department), along with the Operating Agreement to the TraPac MOU, jointly created the Port Community Mitigation Trust Fund (PCMTF) and established a nonprofit, the Harbor Community Benefit Foundation (HCBF), to operate the PCMTF. Pursuant to Section 5(F) of the Operating Agreement, the HCBF shall submit a detailed budget and report to the Board of Harbor Commissioners (Board) on an annual basis regarding its administrative needs and requirements. For calendar year 2013, HCBF requests approval of a flat administrative budget of \$499,200, and release of funds of \$354,200 (which combined with HCBF's projected 2012 surplus of \$145,000, will provide the funds for the requested operating budget for 2013). Staff is recommending the Board approve HCBF's proposed budget with the condition that HCBF provide the Board of Harbor Commissioners prior notice of any reallocation within the HCBF budget that exceeds 10% of the total annual budget.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Harbor Community Benefit Foundation Calendar Year 2013 Operating Budget for a not-to-exceed amount of \$499,200 with the condition that HCBF provide the Board of Harbor Commissioners prior notice of any reallocation within the HCBF budget that exceeds 10% of the total annual budget;
2. Authorize the Executive Director or her designee to execute a joint letter with HCBF to approve the distribution of funds in one lump sum payment of \$354,200 from the California Community Foundation to the HCBF subject to the same condition; and
3. Adopt Resolution No. _____.

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DISCUSSION:

History - On December 6, 2007, the Board certified the Final Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Berth 136-147 (TraPac) Container Terminal and approved the TraPac project. Subsequent to that project approval, certain entities, individuals, and organizations (TraPac Appellants) appealed the certification/project approval to the Los Angeles City Council under the provisions of the California Environmental Quality Act (CEQA). On April 2, 2008, the Board approved a Memorandum of Understanding (TraPac MOU) between the City of Los Angeles and the TraPac Appellants. The TraPac MOU provides for settlement of the appeals and creation of a PCMTF to be operated by a nonprofit entity. The PCMTF is currently funded at approximately \$8.6 million, and the nonprofit created to provide administrative services for this fund is the HCBF.

About Harbor Community Benefit Foundation (HCBF) – Pursuant to the TraPac MOU, the HCBF was created for the purpose of overseeing administration of grants from the PCMTF and allocating money for projects that will protect, improve and assess public health by off-setting past, present, and future off-port impacts from port operations for the communities of Wilmington and San Pedro.

Operating Agreement – The Operating Agreement to the TraPac MOU establishes the PCMTF and requires the establishment of a nonprofit to operate the PCMTF. Pursuant to Section 5(F) of the Operating Agreement, the HCBF shall submit a detailed budget and report to the Board on an annual basis regarding its administrative needs and requirements. Also, the Board of Harbor Commissioners 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.

Background – HCBF has requested Board approval of a Calendar Year 2013 Operating Budget of \$499,200, and release funds from the PCMTF to HCBF in the amount of \$354,200, which combined with HCBF's 2012 projected surplus of \$145,000, will provide the funds for the requested operating budget for 2013 (Transmittal 1). The approved budget for 2012 was \$499,200. The 2013 operating budget is proposed to remain flat at \$499,200.

Staff recommends that HCBF's proposed budget and release of funds be approved with the condition that HCBF provide the Board of Harbor Commissioners prior notice of any reallocation within the HCBF budget that exceeds 10% of the total annual budget. This same condition was imposed by the Board's approval of the last budget on March 1, 2012.

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Update on Accounting for Non-Tidelands Activities of HCBF – In March 2012, when the Board approved HCBF's last budget request, 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 within 60 days after HCBF obtained legal counsel. 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.

Since HCBF's hiring of the law firm of Jenkins & Hugin, LLP as its legal counsel, Harbor Department staff and the Office of City Attorney have discussed accounting of non-Tidelands activities with HCBF and its counsel multiple times and have also included staff from the State Lands Commission in some discussions. Prior to bringing a formal resolution for Board consideration, the following describes the concept under consideration. This version was recently shared with State Lands Commission.

Non-Tidelands Accounting Concepts to be Considered:

1) *HCBF's annual estimated future projections of non-Tidelands administrative activities, delivered prior to commencement of the fiscal year.* When HCBF makes its annual operating budget request to the Board, it shall provide an estimated projection of the percentage of its non-Tidelands administrative activities for the upcoming year. 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.

2) *Annual reconciliation based on actual non-Tidelands administrative activities, delivered following the conclusion of each fiscal year audit.* 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, calculated into the amount of annual operating budget funds released from the PCMTF to HCBF for the following year.

How the actual calculation of non-Tidelands activities will be performed, and the factors on which it is based, is an issue still being developed.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an annual operating budget for the HCBF. 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 3.5 full-time equivalent direct jobs in the five-county region.

FINANCIAL IMPACT:

The approved budget for 2012 was \$499,200. The 2013 operating budget is proposed to remain flat at \$499,200. Funds for the 2013 operating budget in the amount of \$354,200 is requested to be transferred from the CCF to the HCBF upon approval by the Board. This \$354,200 amount request to be transferred coupled with the projected \$145,000 surplus from the 2012 operating budget will fully fund the proposed 2013 operating budget. On November 30, 2012, the PCMTF balance, held by CCF was \$8,608,670.

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CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the requested transfer with the one condition as to form and legality including conformance with the TraPac MOU and Operating Agreement.

TRANSMITTAL:

1. Request from the Harbor Community Benefit Foundation for 2013 Budget

FIS Approval: VR (initials)

CA Approval: JM (initials)

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

GK/mrc