

MEMORANDUM OF UNDERSTANDING

I. DEFINITIONS

1. The term "CEQA" shall mean the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) and the State CEQA Guidelines and applicable case law.
2. The term "City" shall mean the City of Los Angeles.
3. The term "Clean Air Action Plan" shall mean the San Pedro Bay Ports Clean Air Action Plan adopted by the Los Angeles Board of Harbor Commissioners and Long Beach Board of Harbor Commissioners on November 20, 2006.
4. The term "Port" shall mean the Port of Los Angeles Board of Harbor Commissioners.
5. The term "NEPA" shall mean the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*).
6. The term "Nonprofit" shall mean the entity created by this agreement in section V to execute the Port Community Mitigation Trust Fund.
7. The term "Parties" shall mean the City, Port and Appellants.
8. The terms "Port Community Mitigation Fund" shall mean the fund created under this Agreement between the Parties, and shall be used by the Nonprofit solely to fund mitigation projects.
9. The terms "RFP" shall mean Request For Proposals.
10. The term "TraPac EIR" shall mean the environmental impact report prepared by the Port under CEQA for the container terminal project at Berths 136-147 of the Port.
11. The term "TraPac Project" shall mean the project described in the TraPac EIR.
12. The term "Appellants" shall mean the Natural Resources Defense Council, American Lung Association of California, Change to Win, Coalition for a Safe Environment, Coalition for Clean Air, Communities for a Better Environment, Communities for Clean Ports, Earth Day LA, Environmental Priorities Network, Harbor Watts Economic Development Corporation, International Brotherhood of Teamster, Los Angeles Alliance for a New Economy, Physicians for Social Responsibility—LA, San Pedro and Peninsula Homeowner's Coalition, Sierra Club Harbor Vision Task Force, Kathleen Woodfield, and Chuck Hart, who appealed the Port's approval of the TraPac EIR to the City Council.

II. BACKGROUND

WHEREAS, the Parties desire to resolve the disputes between them arising from the Port's approval of environmental impact reports (EIRs);

WHEREAS, the surrounding communities of Wilmington and San Pedro, however, receive a disproportionate share of negative environmental impact due to port operations;

WHEREAS, the Parties agree to support collaborative efforts to grow and green the port in a manner that provides a concrete way to reduce cumulative environmental impacts on the community while creating jobs and economic prosperity to the surrounding region;

WHEREAS, the Parties agree that there are off-port impacts in the communities of San Pedro and Wilmington; and

WHEREAS, the Parties agree that this agreement does not address all the impacts stemming from port operations.

NOW THEREFORE, the Parties agree as follows:

III. DECLARATION OF GOALS AND PURPOSES

The Parties enter this agreement to address the Port and the City's desire to provide for operation of the TraPac Project without litigation or appeals to the Los Angeles City Council from Appellants. The Parties want to address the outstanding impacts from port operations and growth. The Parties agree that this agreement provides a mechanism for moving forward in cooperation to determine how best to address impacts from current and future port operations. All Parties agree that the mitigation contained within this agreement has a nexus with port operations. The Parties' decision to enter this agreement does not constitute any representation regarding the adequacy of the TraPac EIR.

IV. FUTURE COOPERATION BETWEEN THE PORT, CITY, AND APPELLANTS

The Parties or their designated representative shall cooperate to implement this agreement. In addition, the Parties or their designated representative shall agree to cooperatively address and respond to future port-related environmental issues at the Port and in San Pedro and Wilmington. Upon the Port's request, Appellants engaged in the EIR process for specific projects, agree to individually or as a collective group meet and confer in good faith with the Port on such future EIRs on Exhibit B and will make efforts to avoid litigation or appeals to the City Council. The Port will take reasonable efforts to disclose all pertinent information to the Appellants to the extent feasible prior to release of the DEIR to help inform discussion and feedback. To the extent the ports make the information available, Appellants may give Port staff written or oral comments.

Upon the Ports' request, Appellants individually or as a collective group will meet and confer in good faith with the Port after submitting a formal comment letter on a DEIR. After the Port has certified an EIR, Appellants will contact the Port or Port staff prior to filing an appeal or a lawsuit challenging the project within the time constraints imposed by law.

V. PORT COMMUNITY MITIGATION TRUST FUND

The Port shall establish a Port Community Mitigation Trust Fund to be operated by a Nonprofit established for the purpose of overseeing grants from the Port Community Mitigation Trust Fund. A Nonprofit will be set up to provide off port mitigation projects for the communities of Wilmington and San Pedro related to impacts from port operations. The Nonprofit may also fund community adjacent wetlands, supporting habitat zones and appropriate public access and viewing sites to same projects that may occur on-port lands. The Nonprofit may get funding from other sources to execute its mission, and it may also make recommendations to the Board of Harbor Commissioners on mitigation projects.

A. PURPOSE OF THE NONPROFIT

A Nonprofit will be established to address off-port impacts created by existing and future Port operations in the communities of Wilmington and San Pedro, including but not limited to off-Port impacts from the TraPac Project in Wilmington and San Pedro.

Specifically, the Nonprofit's mission shall be to allocate money for projects that will protect, improve and assess public health by offsetting past, present, and future off-port impacts from Port operations, including the CEQA categories of noise, land use, blight/aesthetics, recreation, natural resources, light/glare, safety, air quality, community resources, cultural resources, geology and soils, population and housing, public services, water quality, and future categories of impacts identified under CEQA. Such projects shall be geared towards addressing the cumulative off-port impacts created by Port operations. The Nonprofit shall not allocate money for goods movement infrastructure projects. The Port and City agree that monies provided by the Port to the Nonprofit for such projects shall be allocated in a manner consistent with Section VB of this Agreement.

Funds allocated to the Nonprofit shall not be used to fund CEQA/NEPA mitigation for future projects and/or mitigation already designated within the TraPac EIR/EIS or other future CEQA/NEPA documents. It is assumed that projects subject to CEQA/NEPA will include all mitigation that is legally required and that the Port and/or project applicant will be responsible for the costs associated with that mitigation. In other words, the establishment of the Port Community Mitigation Trust Fund does not eliminate or reduce the Port's obligations to mitigate the adverse impacts of its projects consistent with CEQA, NEPA, and CAAP, whether inside or outside of the Port. In the first year, the Nonprofit shall ensure that the projects described in "Exhibit A" are prioritized for

funding before other projects are approved for funding. Specifically within "Exhibit A," categories A, B, and C shall have greatest priority for initial funding. In addition, the Nonprofit shall develop project criteria to ensure that all other projects approved and funded through the Port Community Mitigation Trust Fund are consistent with this section of this Agreement. The funding provided by the Port to the Port Community Mitigation Trust Fund shall be determined according to the calculus laid out in section VB.

B. FUNDING

- i. \$500,000 up front for organizational costs.
- ii. \$11,240,000 for the TraPac project contribution for the Exhibit A Projects— This \$11.24 million comes from the following two contributions:
 - a. Approximately \$6 million for air filtration systems in schools;
 - b. \$5.24 million for other projects identified in Exhibit A from the projected increase in TEUs from the TraPac project ($\$3.50 \times 1,497,142$ TEUs).
- iii. \$300,000 for off port impact study articulated in section VI A.

Total Year 1 contribution: \$12.04 million

From year 2 forward, the sum of:

- iv. \$2.00 per TEU for the increase in TEUs over the prior calendar year from facilities existing in 2007, and continued for the incremental increase in the four remaining years of this agreement.
- v. If Port expansion projects from Exhibit B proceed, the Port will make a one-time additional contribution at a rate of \$3.50 per TEU (or \$1.50 for px and 0.15 per ton) per project for growth associated from such expansion projects. The funds will be transferred into the Port Community Mitigation Trust Fund on approval by the Port of each individual project. This provision is not to be interpreted that all of the projects from "Exhibit B" must proceed before transferring individual project contributions into the Port Community Mitigation Trust Fund.

"Exhibit C" provides a sample of how potential contributions to the Port Community Mitigation Trust Fund could work in 2008.

C. REQUIREMENTS FOR NONPROFIT

The requirements for compliance for the Nonprofit entity with respect to delegation of authority and compliance with tidelands trust requirements will be determined in connection with the establishment of the Nonprofit. The Nonprofit's bylaws and the Port's agreement with the Nonprofit shall provide for adequate oversight of the

Nonprofit. Prior to the release of any funds, the City Attorney's office shall prepare the necessary documents to ensure compliance with all laws, including the City of Los Angeles Charter and Administrative Code and the Tidelands trust. The Port Community Mitigation Trust Fund will at all times be subject to the applicable local and state laws pertaining to certain legal matters.

D. PHASE IN PERIOD

Within 60 days of entering into this agreement, the Parties will agree to an interim entity that will be responsible for assisting in the creation of the Port Community Mitigation Trust Fund and the Nonprofit to administer the fund. The interim entity will facilitate and coordinate the development of bylaws, organizational structure, and a multi-year strategic plan by working and soliciting input from the Parties. The interim entity may have the responsibility for funding a small subset of Exhibit A projects with Year 1 funds and the studies articulated in section VI upon the direction of the Appellants and the Representative for Council District 15. The allocation within section VBii could go towards consultants and/or experts to assist in development of bylaws, organizational structure, and a multi-year strategic plan.

VI. OFF-PORT IMPACT STUDIES

A. The Port will fund an initial study of off-Port impacts, with a maximum price of \$300,000. If the cost of the study exceeds this amount, then money shall be augmented from section VB funds. The study will consist of an analysis of off-port impacts on health and land use in Wilmington and San Pedro. The land-use analysis will take into consideration the applicability of the California Air Resources Board's April 2005 study "Air Quality and Land Use Handbook: A Community Health Perspective" and the health impacts analysis will take into consideration the applicability of the biannual survey by the UCLA Center for Health Policy Research called the California Health Interview Survey, which already does a more concentrated interview process in LA County. A third party entity selected through an RFP process shall carry out the study. It is envisioned that this initial study will take six months. The Port will not be involved in the execution of this study, but rather, this initial study shall be commissioned by the interim entity identified within section VC. A report on the scope of the study as articulated within the RFP shall be made to the Trade, Commerce and Tourism Committee of the Los Angeles City Council before being issued. In addition, periodic updates on the study progress shall be made to the Trade, Commerce and Tourism Committee of the Los Angeles City Council.

B. Once the Nonprofit has been established, it will fund from section VBii funds a second, more expansive study of off-Port impacts examining aesthetics, light and glare, traffic, public safety and effects of vibration, recreation, and cultural resources related to port impacts on harbor area communities, including Ranchos Palos Verdes, with a maximum price of \$300,000. The Port will not be involved in the selection of the third party entity or execution of this study. If the cost of the study exceeds this amount, then additional funds from section VBii shall be used to complete the study. A third

party entity selected through an RFP process shall carry out the study. The results of the study will be presented to the Trade, Commerce and Tourism Committee of the Los Angeles City Council.

VII. BUFFER ZONE

The Board of Harbor Commissioners will take necessary actions to place a deed restriction on the Wilmington buffer to ensure the property remains as public open space in perpetuity.

VIII. RELEASE OF CLAIMS

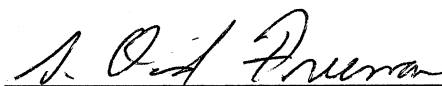
The Appellants hereby release all claims relating to the Port's approval of the TraPac EIR/EIS, including CEQA challenges. Further, this release does not release any of the rights and obligations under this agreement, and shall not extend to any action to enforce or interpret the provisions of this agreement.

IX. RENEWAL OF AGREEMENT

After a period of 5 years, the agreement may be renewed for a successive 5 year period by mutual agreement of the Port and a majority of the Appellants.

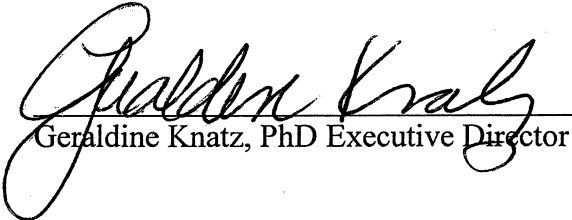
SIGNATURES OF PARTIES:

DATED: 7-15-09
The Los Angeles Board of Harbor Commissioners

By: 
S. DAVID FREEMAN
President

[Signatures Continued On Next Page]

DATED: _____
The City of Los Angeles Harbor Department
And the City of Los Angeles by its Board of
Harbor Commissioners

By: 
Geraldine Knatz, PhD Executive Director

DATED: 4/2/2008
Appellants

By: /s/ David Pettit
David Pettit
Natural Resources Defense Council

By: /s/ Colleen Callahan
Colleen Callahan
Manager of Air Quality Policy and Advocacy
American Lung Association of California

By: /s/ Greg Tarpinian
Greg Tarpinian
Executive Director
Change to Win

By: /s/ Jesse Marquez
Jesse Marquez
Executive Director
Coalition for a Safe Environment

By: /s/ Martin Schlageter
Campaign and Advocacy Director
Coalition for Clean Air

By: /s/ Shana Lazerow
Shana Lazerow
Attorney
Communities for a Better Environment

[Signatures Continued On Next Page]

By: /s/ Rupal Patel
Director
Communities for Clean Ports

By: /s/ Jim Stewart
Earth Day LA

By: /s/ Lillian Light
Lillian Light
President
Environmental Priorities Network

By: /s/ Frank O'Brien
Executive Director
Harbor Watts Economic Development Corporation

By: /s/ Chuck Mack
International Vice President and Port Division Director
International Brotherhood of Teamsters

By: /s/ Patricia Castellanos
Co-Director, Ports Campaign
Los Angeles Alliance for a New Economy

By: /s/ Katherine Attar
Health and Environment Program Coordinator
Physicians for Social Responsibility

By: /s/ Andy Mardesich
Andy Mardesich
President
San Pedro and Peninsula Homeowners Coalition

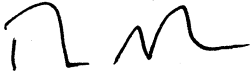
By: /s/ Tom Politeo
Tom Politeo
Co-Chair
Sierra Club Harbor Vision Task Force

By: /s/ Kathleen Woodfield
Kathleen Woodfield

By: /s/ Chuck Hart
Chuck Hart

APPROVED AS TO FORM:

Dated: as of April 3, 2008
ROCKARD J. DELGADILLO, City Attorney

By: 
Thomas A. Russell
General Counsel
Port of Los Angeles

EXHIBITS

EXHIBIT A

Projects identified in A, B, and C will occur in Wilmington only.

- A. Installation of sound dampening double paned windows in schools and residences in the zone of greatest impact from TraPac
- B. Installation and maintenance of air filtration systems/HVAC air purifiers in schools impacted from TraPac operations
- C. Provide funds to local clinics, other health service providers, and other organizations aimed at addressing health impacts from air pollution stemming from port operations;
- D. Qualified job training/hiring program associated with the Wilmington off-port mitigation measures identified in A, B, and C above, consistent with the Port and City's workforce development efforts.
- E. An analysis of the impacts of port operations on wetlands and recreational access in Wilmington and San Pedro. Specifically, the study will serve to assess the potential places for wetlands restoration and creation in San Pedro and Wilmington. The recommendations shall be provided to the Port for action.

EXHIBIT B

List of Projects Relating to Section V of this Agreement

- 1. San Pedro Waterfront Project
- 2. Channel Deepening Project
- 3. B226-236: Evergreen Container Terminal Improvements Project
- 4. Plains All American Oil Marine (Pacific Energy), Pier 400 Project
- 5. B97-109: China Shipping Development Project
- 6. B171-181: Pasha Marine Terminal Improvements Project
- 7. 302-305: APL Container Terminal Improvements Project
- 8. Wilmington Waterfront Master Plan, (Avalon Blvd. Corridor Project)
- 9. Port Transportation Master Plan, Port of Los Angeles
- 10. B206-224: YTI Container Terminal Improvements Project
- 11. B121-131: Yang Ming Container Terminal Improvements Project
- 12. Ultramar Lease Renewal Project
- 13. Terminal Island On-Dock Rail Project

EXHIBIT C

The following chart outlines how potential contributions to the Port Community Mitigation Trust Fund could work in 2008.

	Growth	Contribution
Natural growth	365,000 TEUs (@ \$2)	\$730,000
San Pedro Waterfront Project	1,106,787 PX (@ \$1.5)	\$1,661,805
B97-109: China Shipping Development Project	1,147,800 TEUs (@ \$3.50)	\$4,017,300
Plains All American Oil Marine (Pacific Energy), Pier 400 Project	34,845,841 tons (@.15)	\$5,226,876
Total		\$11,635,981

Assumptions: (1) Natural growth in TEUs at 5%;
(2) Waterfront Development adds 1,106,787 passengers;
(3) China Shipping Project assumes an additional 1,147,800 TEUs;
(4) Pacific Energy Partners add 34,845,841 tons; and
(5) The projects within this table proceed.