

**Remarks from Tom Politeo
Regarding San Pedro Waterfront Hearing, Sep 29, 2009.**

This is not the time to take refuge in being ordinary.

Climate change already costs the world an estimated \$100 to \$800 billion a year.

In the brief time of my testimony, one or two people will die from climate change. That's 300,000 people in a year, more than the size of Janice Hahn's council district. And the rate is growing faster.

The unfortunate will die because of weather changes they have no control over. They will be among the world's poorest—with the smallest carbon footprint.

We won't know any of them, yet we are connected to each of them because their deaths will be brought about by the way we and other developed nations use energy.

So, this is not the time to take refuge in being ordinary.

If we think in ordinary terms—we can be dismissive of our ability and obligation to affect change. In fact, this project itself will cause little damage, so why bother? Because it is part of an unsustainable development pattern repeated a million times—and they all add up.

If we only rely on CEQA as it comes straight off the shelf, we will be exactly where we are today—because it is business as usual that put us in this mess.

But, if we think of what good we can accomplish here, in terms of our innate ability to extraordinary aspirations, we can start a change that has a huge positive impact. This is why its important to form alliances between business, the environment and labor. We need to work toward our greatest common aspirations.

Transportation is a big chunk of the climate problem and we won't solve our climate woes without addressing trip reductions. We need designs that decisively encourage economic activity without encouraging more car trips. Instead, designs should provide such a wonderful pedestrian experience that people can't wait to leave their cars behind. Coincidentally, Los Angeles economic future depends on trip reductions, or gridlock will certainly strangle it.

The core of this EIR begins with a plan to build a highway and parking lots to bring visitors into the area. This is a carbon-rich design in a carbon-fat world. Though staff has done a yoeman's job putting a green wrapper on it, the core remains brown.

In the Final EIR, staff denied moving cruise parking off the tidelands saying the port couldn't afford to. This misses several points. First, we need to reduce the number of

car trips per visitor—so the size of the parking can be reduced with this success. Second, we can phase this in. Third, we shouldn't be giving away the parking, but charging enough for it to pay for providing it. And perhaps a bit extra, to help with quality bus service to bridge us to light rail.

There are similar situations in this EIR. A better dialogue between stakeholders and staff might have avoided these. Yet, staff was under immense and unrealistic pressure to get the EIR out ASAP. Even so, several lengthy delays ensued.

So, now, the question is, how can we move forward without hesitation and better address climate change and integration of the waterfront with downtown.

Please read the Washington Post story I've given you. Clearly, we can't afford to take refuge in being ordinary.

Tom Politeo
PO Box 1256
San Pedro, CA 90733

Attached:

Example of open issues.

Washington Post article on climate change published today.

Example of open issues (changes we seek over time):

- Remove roadways and parking from the tidelands to free tidelands up for water-dependent and water-benefitting uses.
- Reduce total car trips overall and car trips per visitor. Strategies to do so.
- Parking pays for itself plus provides transit subsidy to help bootstrap high-quality transit service to area.
- Parking to serve both Wilmington and San Pedro at location between Harbor Freeway and John S. Gibson Boulevard. Important to have parking to help support big visitor-draw festivals in Wilmington as well.
- Extend Plaza Park over Harbor Boulevard with a green & plaza-roof structure with parking, a conference center, and non-tidelands-appropriate activities beneath in cooperation with development partner, other agencies. Structure hides Harbor and bridges community to Ports o' Call and waterfront.
- Bring light rail to San Pedro with stops at the Vincent Thomas Bridge Cruise

Center and at 13th and Beacon, serving downtown and Ports o'Call.

- Historic Red Car to run on 6th Street to Pacific -- and connecting to Wilmington. Separate from light rail.
- Complete cruise build out with visitor center between Vincent Thomas Bridge and fireboat station. Kaiser East added only if needed (possibly for Oasis ships). No Kaiser West, ever.
- Marine center with water-dependent uses & visitor serving component (such as lectures, open demo labs)
- Move motorized boat launch from Cabrillo to Kaiser or Warehouse 1 area.
- Provide staging area for water sports with rental services at Kaiser West.
- Parking reduction at Cabrillo with parking structure near Marina Hotel area.
- Expand Salinas de San Pedro somewhat
- More shaded picnic facilities at Cabrillo
- Beach-visitor serving retail (food, beverages sunscreen sales, umbrella rentals, charcoal, etc) at Cabrillo to help reduce need to bring car just to schelp stuff.
- Amphitheater in slope of bluffs above Ports O' Call toward Southern Pacific Slip. (not a port project)
- Two story design in Ports O' Call to provide 2-nd story walkways as well.
- Water feature in Ports o' Call to permit paddle boating, gondola rides, kayaking
- Integrated marine exhibits and education throughout area, sometimes combined with public art elements.
- Bridge to Ports O'Call waterfront area is almost entire car free.
- Completion of three-braids of California Coastal Trail: Walking, Cycling, Jogging. As much of cycling route to be first class as possible, without cumbersome dismounts.
- Connection of CCT to Wilmington, and then cooperation with Long Beach to bring trail around to Long Beach from Wilmington.

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New Analysis Brings Dire Forecast Of 6.3-Degree Temperature Increase

By *Juliet Eilperin*
Washington Post Staff Writer
Friday, September 25, 2009

Climate researchers now predict the planet will warm by 6.3 degrees Fahrenheit by the end of the century even if the world's leaders fulfill their most ambitious climate pledges, a much faster and broader scale of change than forecast just two years ago, according to a [report](#) released Thursday by the United Nations Environment Program.

THIS STORY

New Analysis Brings Dire Forecast Of 6.3-Degree Temperature Increase
Emissions Reductions Proposals (Pdf)

The new overview of global warming research, aimed at marshaling political support for a new international climate pact by the end of the year, highlights the extent to which recent scientific assessments have outstripped the predictions issued by the Nobel Prize-winning U.N. Intergovernmental Panel on Climate Change in 2007.

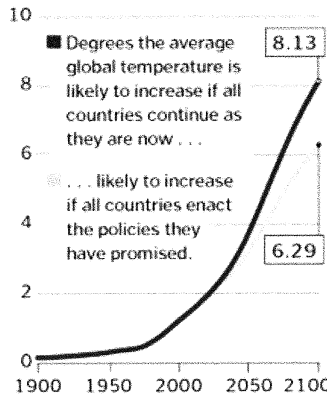
Robert Corell, who chairs the Climate Action Initiative and reviewed the UNEP report's scientific findings, said the significant global temperature rise is likely to occur even if industrialized and developed countries enact every climate policy they have proposed at this point. The increase is nearly double what scientists and world policymakers have identified as the upper limit of warming the world can afford in order to avert catastrophic climate change.

"We don't want to go there," said Corell, who collaborated with climate researchers at the Vermont-based Sustainability Institute, Massachusetts-based Ventana Systems and the Massachusetts Institute of

Warming Trend

Researchers say global temperature is likely to rise more than six degrees by the end of the century even if every country enacts all climate legislation it has promised to enact to date.

Temperature increases, in degrees Fahrenheit



Source: Sustainability Institute
The Washington Post

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Technology to do the analysis. The team has revised its estimates since the U.N. report went to press and has posted the most recent figures at ClimateInteractive.org.

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The group took the upper-range targets of nearly 200 nations' climate policies -- including U.S. cuts that would reduce domestic emissions 73 percent from 2005 levels by 2050, along with the European Union's pledge to reduce its emissions 80 percent from 1990 levels by 2050 --and found that even under that optimistic scenario, the average global temperature is likely to warm by 6.3 degrees.

World leaders at the July Group of 20 summit in L'Aquila, Italy, pledged in a joint statement that they would adopt policies to prevent global temperature from climbing more than 2 degrees Celsius, or 3.6 degrees Fahrenheit: "We recognize the broad scientific view that the increase in global average temperature above pre-industrial levels ought not to exceed two degrees C."

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Corell, who has shared these findings with the Obama administration as well as climate policymakers in China, noted that global carbon emissions are still rising. "It's accelerating," he said. "We're not going in the right direction."

Achim Steiner, UNEP's executive director, told reporters at the National Press Club on Thursday that the report aims to update the IPCC's 2007 findings to reflect both new physical evidence and a more sophisticated understanding of how Earth systems work.

"With every day that passes, the underlying trends that science has provided is . . . of such a dramatic nature that shying away from a major agreement in Copenhagen will probably be unforgivable if you look back in history at this moment," Steiner said. He noted that since 2000 alone, the average rate of melting at 30 glaciers in nine mountain ranges has doubled compared with the rate during the previous two decades.

"These are not things that are in dispute in terms of data," he said. "They are actually physically measurable."

Other findings include the fact that sea level might rise by as much as six feet by 2100 instead of 1.5 feet, as the IPCC had projected, and the Arctic may experience a sea-ice summer by 2030, rather than by the end of the century.

While the administration is pressing this week for an end to fossil-fuel subsidies as part of the current G-20 summit in Pittsburgh -- and Treasury Secretary Timothy F. Geithner told reporters Thursday that world leaders appear open to such a proposal -- activists such as 350.org director Bill McKibben said politicians worldwide are not taking aggressive enough steps to address climate change.

"Here's where we are: The political system is not producing at the moment a result which has anything to do with what the science is telling us," said McKibben, whose group aims to reduce the concentration of carbon dioxide in the atmosphere to 350 parts per million, well below the 450 ppm target that leaders of the Group of 20 major nations have embraced.

Rep. Edward J. Markey (D-Mass.), co-sponsor of the House-passed climate bill that researchers included as part of their new temperature analysis, said, "As sobering as this report is, it is not the worst-case scenario. That would be if the world does nothing and

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allows heat-trapping pollution to continue to spew unchecked into the atmosphere."

Michael MacCracken, one of the scientific reviewers for the IPCC and a contributor to the UNEP report, said that if developed nations cut their emissions by half and the developing countries continued on their current path, or vice versa, the world would still experience a temperature increase of about 2 degrees Fahrenheit by 2050.

"We face a situation where basically everybody has to do everything they can," MacCracken said.

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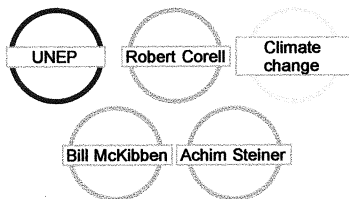
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From: Ehrlich, Kenneth A.
To: Galvin, Michael
Cc: McDermott, Kathryn; Knatz, Geraldine
Sent: Thu Sep 24 14:34:32 2009
Subject: Gambol- San Pedro Waterfront EIR/EIS calls for demo of SWM Compressor Building within historic district

Mike-

We understand that you are the Port's real estate person most responsible for the San Pedro Waterfront project. Our office represents Gambol Industries, which recently entered into the attached MOU with POLA.

We now understand that POLA's EIR/EIS for the San Pedro Waterfront project calls for the relocation of Jankovitch Marine Fuels (now on the west side of the Main Channel) to the middle of the former SWM site. The relocation would cause the demolition of the Compressor Building at the SWM site and would likely thwart the agreement between Gambol and POLA regarding a potential shipyard at the former SWM site. Specifically, page 4-66 of the EIR/EIS' Cumulative Analysis Section (Chapter 4) provides as follows:

"Construction of the new Berth 240 Fueling Station would also occur within the Southwest Marine Historic District. This facility consists of one 120,000 gallon sulfur diesel tank, one 50,400 gallon biodiesel tank, and one 6,000 gallon gas tank. Waterside construction would include approximately 6,400 square feet of new floating docks to be supported by 46 new piles. The proposed fueling station would be compatible with the historic district's industrial character. New tanks, equipment, and infrastructure would be built on the site for the proposed fueling station. **The Compressor Building, a non-contributing building within the district boundaries, would be demolished...**"

We believe that, as proposed the relocation of Jankovitch as contemplated by the Waterfront project's EIR/EIS, would breach the MOU and frustrate the purpose of the MOU. Please contact our office at your earliest convenience to discuss this matter. Gambol reserves all of its rights, and waives none.

Thanks.

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MEMORANDUM OF UNDERSTANDING FOR EXCLUSIVE RIGHT TO NEGOTIATE

This Memorandum (“MOU”) is made and entered into as of June _____, 2009 between and among the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners (“Board”) of the Port of Los Angeles (“POLA”), a department of the City of Los Angeles; Gambol Industries, Inc., a California corporation (“Gambol”), and The Los Angeles Conservancy (“LAC”), a 501(c)(3) non-profit corporation, in connection with the matters described below. Collectively, POLA, Gambol, and LAC will be referred to as the “Parties”.

RECITALS

a. Gambol operates a ship repair and shipbuilding business in the Port of Long Beach, adjacent to POLA and within the same San Pedro Bay port complex. Gambol seeks to operate a shipyard within portions of the former Southwest Marine site. Gambol asserts that it is prepared to invest in excess of \$1,000,000 in the Conceptual Project Description and Business Plan (as specified below). Previously, a portion of the former Southwest Marine site was used as a shipyard and has since been designated as eligible for listing as a historic district in the National Register of Historic Places by the Port of Los Angeles.

b. LAC asserts that it is the countywide historic preservation organization for the Los Angeles area and is the largest local historic preservation organization in the United States, with 7,000 members. Established in 1978, LAC works to preserve and revitalize the significant

architectural and cultural heritage of Los Angeles. LAC claims that over the past three years, they have submitted written comments in conjunction with environmental review for proposed projects that would affect historic resources at POLA, including the Southwest Marine Buildings Demolition Project and the Main Channel Deepening Project. The Environmental Impact Report for the Southwest Marine Buildings Demolition Project was never finalized by the Port and the Port is no longer pursuing the project.

c. On or about April 29, 2009, the Board acted upon the Port's Main Channel Deepening Project ("Channel Deepening Project") (LAHD ADP #990809-102) by: (1) certifying the Supplemental Environmental Impact Report/Supplemental Environmental Impact Statement (SEIR/SEIS) for the Channel Deepening Project, and (2) approving Port Master Plan Amendment No. 24 (PMPA 24).

d. The Channel Deepening Project is vitally important to the POLA. It will deepen the channel to -53 feet Mean Lower Low Water ("MLLW"), thus allowing the new largest class of cargo vessels to access the port. Access of the newest class of vessels is necessary for the POLA to remain competitive. In addition the Channel Deepening Project will beneficially reuse dredge material and confine existing and in-situ contaminated sediments within a Confined Disposal Facility ("CDF") at Berths 243-245.

e. Among other project components, the Channel Deepening Project will fill the slips at Berths 243-245 with contaminated and non-contaminated dredge materials generated by the Channel Deepening Project.

f. Gambol alleges that slips at Berths 243-245 and portions of the former Southwest Marine Site can be put to revenue-generating use as a shipyard and marine center, and believes that the filling of Berths 243-245, as currently described in the Channel Deepening Project,

would prevent such future shipyard and marine center. Gambol further believes that the dredge deposition at Berths 243-245 should be minimized and water access maximized.

g. Gambol and LAC allege that the SEIR/SEIS and PMPA 24 are legally flawed and would be overturned if reviewed by a Court. POLA denies all such allegations and further asserts that the SEIR/SEIS and PMPA 24 are in full compliance with all applicable laws and regulations.

h. On April 30, 2009, POLA filed a Notice of Determination ("NOD") for the Channel Deepening Project in accordance with Public Resources Code § 21108. On June 3, 2009, POLA issued a Notice of Exemption ("NOE") for PMPA 24.

i. On or about May 15, 2009, Gambol appealed the certification of the SEIR/SEIS to the Los Angeles City Council ("City Council"). On May 22, 2009, LAC appealed the certification of the SEIR/SEIS to the City Council. The City Council has yet to rule on either of the pending appeals. On or about June 8, 2009, Gambol forwarded a letter to the California Coastal Commission ("CCC") urging the CCC to reject PMPA 24 and not to make the required consistency determination regarding PMPA 24 in connection with the Coastal Zone Management Act. The CCC has yet to consider PMPA 24 or the related consistency determination.

j. Gambol would like to see the Port make available for use as a shipyard portions of the former Southwest Marine Site. The Parties have initiated discussions regarding Gambol's future development of a shipyard and accommodating receipt of dredge material.

k. This MOU is intended to specify the mutual understanding of POLA, Gambol and the LAC regarding general business terms and to describe the process by which the Parties will proceed to explore the concept of a shipyard in portions of the former Southwest Marine Site. The Parties intend to explore a business plan ("Business Plan") and proposed

conceptual project description for purposes of CEQA (“Conceptual Project Description”) consistent with this MOU.

AGREEMENT

- 1. Incorporation.** The above Recitals are incorporated by this reference.

- 2. Process for Development of Conceptual Project Description and Business Plan for Shipyard.**
 - a. Gambol will, at its sole cost and expense, prepare and submit to POLA a proposed Business Plan and proposed Conceptual Project Description for a shipyard in portions of the former Southwest Marine Site (“Site”), as attached.
 - b. The proposed Business Plan will address the financial capability of Gambol to develop a shipyard, the economic viability of the shipyard, the projected customer base, which could be used to develop a Term Sheet.
 - c. The proposed Conceptual Project Description will include all components of a project description called for by CEQA.
 - d. Both the proposed Business Plan and Conceptual Project Description will be consistent with the Clean Air Action Plan and other City of Los Angeles rules, regulations, standards and policies and are a necessary process prior to any next steps, including but not limited to CEQA review.
 - e. In order to facilitate Gambol's request for a Proposed Project, POLA agrees to cooperate with Gambol, at no cost to POLA other than reasonable staff time, in connection

with the Proposed Business Plan and Conceptual Project Description.

f. Within twelve (12) months of the execution of this MOU, Gambol will submit the proposed Business Plan and Conceptual Project Description for the proposed shipyard (“Proposed Project”) to POLA. To the extent that Gambol seeks to maintain confidentiality over documents submitted to POLA in connection with the Proposed Project, Gambol will specify the basis for confidentiality upon submission of the subject document(s). If any third-party challenges the confidentiality of such documents, Gambol agrees indemnify, defend and hold harmless the City of Los Angeles and POLA in connection with such challenge.

g. POLA staff shall review the Proposed Business Plan and Conceptual Project Description and, in a single Board Report, provide recommendations to the Board at a meeting noticed pursuant to the Brown Act. If the Board decides to designate the future use of the Southwest Marine site as a shipyard, POLA shall exclusively negotiate with Gambol as the proposed operator, but only provided that the appropriate findings as to the selection of the sole source operator can be made, which findings shall be consistent with City’s Charter and POLA’s leasing policy. The Board shall also direct staff to initiate CEQA review, and business term negotiations with Gambol, which shall not be suspended or terminated without Board direction. Notwithstanding the foregoing, the Board retains its full discretion to proceed in any manner it deems best at such time.

3. Discretionary Process. The Parties acknowledge and agree that: (a) any undertaking of Proposed Project would require the review and subsequent approvals of City entities including, without limitation, the Board and the City Council, which approvals have neither been sought nor obtained, and that entitlements for any proposed project may be granted

or denied if and when submitted for the aforementioned review and approvals. The Parties further acknowledge that the legal effectiveness of any lease document or other entitlement that may authorize the uses underlying the Proposed Project would require compliance with all applicable laws and regulations, which laws may include, without limitation, the California Environmental Quality Act (Public Resources Code Section §21000 et seq. (“CEQA”), the National Environmental Protection Act (“NEPA”), and the California Coastal Act (“Coastal Act”). The Parties further acknowledge that POLA expressly reserves the right to consider all mitigation measures and alternatives for any proposed project, including the “no project” alternative, if such mitigation measures or alternatives are required by CEQA, the Clean Air Action Plan (“CAAP”) or other applicable POLA policies. Gambol and LAC further acknowledge that this MOU shall not be construed as a direct or indirect commitment by POLA or any other entity to take or to not take any action, whether under CEQA, NEPA, the Coastal Act or otherwise, in connection with the proposed Conceptual Project Description or any matters set forth in this MOU.

4. **Exclusivity Period.** To the extent that negotiations occur with respect to the Proposed Project, POLA shall negotiate exclusively with Gambol as to the proposed Business Plan and Conceptual Project Description until the earlier occur of: (a) Gambol submits its proposed Business Plan and Conceptual Project Description as set forth in Section 2 above, (b) Twelve (12) months from the date of execution of this MOU and, in POLA’s judgment, Gambol has not fulfilled its obligations under Section 2 above, or (c) Gambol’s delivery of written notice to POLA’s Executive Director of its determination in its sole and absolute discretion that Gambol does not wish to proceed with the Proposed Project. The Exclusivity Period may be extended up to an additional ninety (90) days by the written

mutual agreement of Gambol and POLA, which shall not be unreasonably withheld. During the Exclusivity Period, access to the Site by Gambol shall be prohibited except by written permission by POLA, which shall not be unreasonably withheld in light of Gambol's need to develop a Business Plan and Conceptual Project Description. During the Exclusivity Period, POLA will not enter into any agreement or initiate environmental review regarding: (i) the long term use of the Site, or (ii) the development of any project similar to the Proposed Project within POLA, except for the project initiated by the application for development project submitted by Al Larson Boat Shop in or around June of 2008, unless mutually agreed to by the Parties.

5. **Collaboration.** The Parties intend to engage in a collaborative process to develop an acceptable method to complete the disposal of the dredge material that minimizes the filled portion of the berths and maximizes the water access, in a manner that facilitates the Proposed Project and the Channel Deepening Project consistent with the SEIR/SEIS, as certified by the Board. Each party agrees to utilize a State of California licensed Structural Engineer to work to examine conceptual designs for the CDF that are consistent with the approved SEIR/SEIS, meets with POLA structural design requirements, and attempts to minimize land and maximize water to the extent possible. In this attempt, POLA will solicit the advice of Gambol and LAC, but retains the right to make the final determination on design. (The Parties acknowledge that the SEIR/SEIS, as certified by the Board, allows up to complete filling of Berths 243-245).

6. **Channel Deepening Project.** It is the intention of the Gambol and POLA that nothing in this MOU shall delay the Channel Deepening Project. POLA is free to move forward with the planned demolition work at the Berth 243-245 slips as scheduled, but will initiate the construction of the proposed rock dike foundation, no earlier than February 1, 2010, unless mutually agreed to by Gambol and POLA. POLA shall not absorb any additional costs, other than those already contemplated in the certified SEIR/SEIS, in order to complete any and all aspects of the approved Channel Deepening Project. Within seven (7) days of the date of this Agreement, the Parties shall meet with the intent of agreeing on a schedule for Gambol's submittal, and POLA's consideration and conceptual approval, of CDF engineering design plans for Berths 243-245. During the term of this MOU, the Port shall provide to the Trade, Commerce and Tourism Committee of the City Council monthly reports on the status of the Proposed Project, the development of the proposed Business Plan and Conceptual Project Description, and the CDF engineering design plans for Berths 243-245.

7. **Construction Labor.** Provided that Gambol (or an affiliated Gambol entity) becomes a POLA permittee (tenant) and a project begins construction, Gambol agrees to enter into project labor agreements with all appropriate entities. The Parties agree that no construction is contemplated in the MOU. Any construction in the future would be subject to CEQA.

8. **Third-Party Tenants of Portions of the Property.** The Parties acknowledge that certain third-parties may have, or in the future may have Permit lease rights to certain portions of the Property during the Exclusivity Period (such as Film L.A., Inc., SoCal Ship Services and Jankovitch Marine Fuels in the future). POLA shall not create lease rights

during the Exclusivity Period which frustrates the purpose of this MOU.

9. **Informal Dispute Resolution.** In the event of a future dispute between the Parties regarding this MOU, including but not limited to any and all disputes in connection with this MOU (collectively "Future Disputes"), prior to filing litigation, the Parties shall meet and confer within ten (10) days of written notification and request for a conference to discuss, among other points, their respective positions and measures intended to result in compliance and/or the implementation of obligations encompassed in this Agreement. In the event that this meet and confer process does not resolve all issues, the Parties agree to confer and reserve jurisdiction in the City Councilmember for the 15th District of the City of Los Angeles as a third party neutral to mediate any future disputes prior to filing litigation. To the extent that, within thirty (30) days of the written notice referenced above, the Parties have not resolved all disputed issues, the Parties shall then have the right to pursue all available legal and equitable remedies, including litigation. To the extent that a conflict of interest may exist in that POLA is a department of the City of Los Angeles and the City Councilmember for the 15th District of the City of Los Angeles constitutes an elected official of the City of Los Angeles, Gambol and LAC waives such actual or potential conflict of interest for purposes of this Agreement.

10. **Former Southwest Marine Site.** Prior to any demolition, use or re-use of the buildings at the former Southwest Marine Site, POLA will prepare an Environmental Impact Report. In determining future use/s for the Property, POLA will consider adaptive reuse as an important consideration where it can be applied in a feasible manner and consistent with all applicable laws to projects and project alternatives being considered by the Board.

11. **Release.** Gambol and LAC, and their respective former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing, forever release and discharge the City of Los Angeles and POLA's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing from and against any and all of Gambol's and LAC's rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision which exist as of the effective date of this MOU that are based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with:

- a. the SEIR/SEIS,
- b. PMPA 24,
- c. Gambol's appeal of the SEIR/SEIS to the City Council
- d. LAC's appeal of the SEIR/SEIS to the City Council
- e. Gambol's request to CCC for rejection of the PMPA 24

Gambol and LAC jointly further compromise and settle the matters released above, and agree that this compromise and settlement shall constitute a bar to the assertion of any such matter against POLA. Gambol and LAC jointly covenant and agree never to commence, voluntarily assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted against the City of Los Angeles, POLA and/or POLA's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing in any action, proceeding or defense based in whole or in part upon any of the matters released above.

Gambol and LAC jointly represent and warrant to POLA that: (a) they have not at any time assigned or transferred, or purported to assign or transfer, to any person, firm, partnership, corporation or entity whatsoever, any of the rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision, which exist as of the effective date of this MOU, and which are based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with items a through e above; (b) no subsidiary(ies), or affiliate(s) of Gambol or LAC shall commence, voluntarily assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted any of the matters released above against POLA; and (c) it has the full right, power and specific authority to enter

into, execute and consummate this MOU. Gambol and LAC jointly and severally agree to indemnify, defend and hold harmless, the City of Los Angeles, POLA and POLA's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing from and against any and all rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision, which exist as of the effective date of this MOU, in any way arising from, connected with or related to its assignment or transfer or purported assignment or transfer set forth above by such entity. Gambol and LAC further agree not to indirectly challenge or oppose the Channel Deepening Project.

12. Waiver of Section 1542. There is a risk that, subsequent to the execution of this MOU, a party hereto will discover, incur or suffer loss, damages or injuries which are in some way related to the matters released but which are unknown or unanticipated at the time that this MOU is executed. Each party hereby assumes this risk and understands that THIS AGREEMENT SHALL APPLY TO ALL UNKNOWN OR UNANTICIPATED LOSSES, DAMAGES OR INJURIES RELATED TO THE MATTERS RELEASED ABOVE, AS WELL AS THOSE KNOWN AND ANTICIPATED. Each party hereby expressly acknowledges that each is familiar with section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each party understands and acknowledges the significance and consequence of this specific waiver of section 1542. Having the opportunity to consult with legal counsel, each party expressly waives and relinquishes any and all rights and benefits which it or he/she may have under section 1542 of the Civil Code to the full extent that such rights and benefits may be lawfully waived pertaining to the subject matter of this MOU.

13. Dismissal of Appeal. Immediately upon execution of this MOU, Gambol and LAC shall dismiss, with prejudice, their appeals of the SEIR/SEIS and notify the Coastal Commission that a resolution has been reached and Gambol no longer objects to PMPA 24 and the related consistency determination (and concurrently provide written confirmation of same to POLA's Executive Director). Notwithstanding the provisions of Section 13, Gambol and LAC's failure to comply with this Section immediately shall render this MOU, null and void without further action of Board or Council.

14. Limitations. This MOU does not create binding obligations on the part of the POLA to assign the Property to Gambol or on the part of Gambol to lease the Site from POLA. Neither does this MOU constitute any form of approval of any development on the Site or a shipyard or use of Berths 243-245. The Parties recognize that this MOU is a

summary of the general business terms only. This MOU does not constitute an assignment, permit, license, entitlement for use, or other commitment by POLA to a definite course of action concerning the Proposed Project.

15. Warranties. The Parties to this MOU warrant that no promise or inducement has been offered except as set forth herein, that this MOU is executed without reliance upon any statement or representation by any other party or person or their representatives concerning the nature and extent of injuries, damages, liability or consequences. The Parties warrant that they are legally competent and authorized to execute this MOU and the Parties accept full responsibility therefore.

16. Assignment. Gambol shall not assign or transfer any interest in this MOU.

17. Non Reliance and Third Parties. Each of the parties acknowledges that (i) there are no representations or warranties other than those expressly set forth in this MOU Agreement; and (ii) no party has relied or will rely in respect of this MOU or the processes contemplated hereby upon any document or written or oral information previously furnished to or discovered by it, other than this MOU, including the schedules hereto. POLA will not have or be subject to any liability to Gambol or LAC for actions based on any information contained in this MOU. In addition, this MOU does not create any rights in third parties. This MOU represents the entire agreement of the Parties with respect to the subject matter herein, and merges and supersedes any prior written or oral representations, discussions, understandings, representations or agreements by or between the Parties relating to the subject matter hereof.

18. No Admissions. Neither this MOU nor the settlement which led to it is intended to be and shall not be deemed, construed or treated in any respect as an admission by any person or entity for any purpose.

19. California Law. This MOU shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law principles. This MOU may be modified, altered or amended only by another document in writing signed by all of the parties.

20. Notices. The Parties shall send all notices or other communication necessary under this MOU in writing by personal service, or express mail, Federal Express, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties at their respective addresses as follows:

If to Gambol:

Gambol Industries
1825 Pier D Street
Long Beach, CA 90802
Attn: Robert Stein

With a copy to:

Kenneth A. Ehrlich
Jeffer, Mangels, Butler & Marmaro LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

If to The Los Angeles Conservancy: The Los Angeles Conservancy
523 West Sixth St., Suite 826
Los Angeles, CA 90014
Attn: Linda Dishman/Mike Buhler

If to POLA: Port of Los Angeles
425 South Palos Verdes Street
San Pedro, California 90731
Attn: Geraldine Knatz, Ph.D.

With a copy to: Los Angeles City Attorney's Office
425 South Palos Verdes Street
San Pedro, California 90731
Attn: Thomas A. Russell, Esq.

Any such notice shall be deemed to have been given upon delivery or two business days after deposit in the mail as aforesaid. A Party may change the address at which it desires to receive notice upon given written notice of such request to the other parties.

21. Modification In Writing. This MOU may be modified only by written agreement of all Parties. Any such modifications are subject to all applicable approval processes set forth in the Los Angeles City Charter, the Los Angeles City Administrative Code, or elsewhere.

22. Waiver. A failure of any Party to enforce the MOU upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

23. Severability. Should any part, term, condition or provision of this MOU be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this MOU shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this MOU, then such part, term, condition or provision shall be deemed not to be a part of this MOU; or (b) if such part, term, condition or provision is material to this MOU, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

24. Jurisdiction. Subject to the provisions of Section 9, the Parties consent to the jurisdiction of the Superior Court of the State of California, , for the enforcement of this MOU.

25. Counterparts. This MOU may be signed in counterparts.

[Signatures on Following Page]

IN WITNESS WHEREOF the Parties have executed this MOU as of the date specified above.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

BY: _____ (Print Name)
ITS: _____ (Print Title)

GAMBOL INDUSTRIES

BY: _____ (Print Name)
ITS: _____ (Print Title)

LOS ANGELES CONSERVANCY

BY: _____ (Print Name)
ITS: _____ (Print Title)

APPROVED AS TO FORM:

_____, 2009
ROCKARD J. DELGADILLO, City Attorney

By _____
THOMAS A. RUSSELL, General Counsel


Exhibit "A" – Description of Site

IN WITNESS WHEREOF the Parties have executed this MOU as of the date specified above.

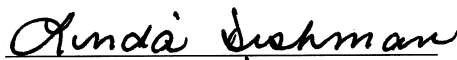
THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

BY: _____ (Print Name)
ITS: _____ (Print Title)

GAMBOL INDUSTRIES


BY: ROBERT A. STEIN (Print Name)
ITS: PRESIDENT (Print Title)

LOS ANGELES CONSERVANCY


BY: Linda Dishman (Print Name)
ITS: Executive Director (Print Title)

APPROVED AS TO FORM:

_____, 2009
ROCKARD J. DELGADILLO, City Attorney

By _____
THOMAS A. RUSSELL, General Counsel

IN WITNESS WHEREOF the Parties have executed this MOU as of the date specified above.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Geraldine Knatz
BY: Geraldine Knatz (Print Name)
ITS: Executive Director (Print Title)

GAMBOL INDUSTRIES

BY: _____ (Print Name)
ITS: _____ (Print Title)

LOS ANGELES CONSERVANCY

BY: _____ (Print Name)
ITS: _____ (Print Title)

APPROVED AS TO FORM:

June 29, 2009
ROCKARD J. DELGADILLO, City Attorney

By TRM
THOMAS A. RUSSELL, General Counsel

Response to Comments on Final EIR: Gambol Industries

Comment #1

Thank you for your comment. The San Pedro Waterfront Project does not call for the relocation of Jankovich to the middle of the former Southwest Marine Site. As discussed in the EIS/EIR, under the proposed Project, Jankovich fueling station operations would cease June 2012, and the site would be decommissioned. A new fueling station would then be developed along the north edge of Berth 240. The new fueling station does not demolish or modify any historic structures that are part of the Southwest Marine Historic District. In addition, Gambol has previously indicated that the fueling station could be accommodated in or adjacent to their development at the Southwest Marine properties. Should Gambol's plan for Southwest Marine move forward, the new fueling station would be designed to accommodate Gambol's redevelopment plans. Staff would then review the final plans for the new fueling station and Gambol's redevelopment, and if they differed significantly from what was assessed in the San Pedro Waterfront EIS/EIR, would include a new environmental assessment. Therefore, the new fueling station does not represent a conflict with the future redevelopment of the SW Marine facilities.

Kenneth A. Ehrlich
Direct: (310) 785-5395
Fax: (310) 712-3395
KEhrlich@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

Ref: 70343-0001

September 24, 2009

VIA EMAIL AND U.S. MAIL

President Cindy Miscikowski
and Members of the Los Angeles Board of Harbor Commissioners
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731

Re: Opposition to Certification of San Pedro Waterfront Project EIR/EIS
State Clearinghouse No. 2005061041
Hearing Date: September 29, 2009, Special Agenda

Dear President Miscikowski and Members of the Board of Harbor Commissioners:

We represent Gambol Industries ("Gambol") regarding its efforts to preserve a shipyard option at the Southwest Marine site. On June 29, 2009, Gambol entered into a Memorandum of Understanding for Exclusive Right to Negotiate a Business Plan¹ and Conceptual Project Description ("MOU") for a shipyard in portions of the former Southwest Marine site with the City of Los Angeles, acting through its Board of Harbor Commissioners ("Board") of the Port of Los Angeles ("POLA") and the Los Angeles Conservancy. See Exhibit "A."

A. Contractual Obligations Under the MOU

The MOU provides that "in order to facilitate Gambol's request for a Proposed Project," POLA must "cooperate with Gambol, at no cost to POLA other than reasonable staff time, in connection with the Proposed Business Plan and Conceptual Project Description." MOU, § 2(e). Section 5 provides that "[t]he Parties intend to *engage in a collaborative process* to develop an acceptable method to complete the disposal of the dredge material that minimizes the filled portion of the berths and maximizes the water access, *in a manner that facilitates the Proposed Project* and the Channel Deepening Project consistent with the SEIR/SEIS, as certified by the Board." (emphasis added). Further, Section 8 prohibits POLA from creating lease rights to third-parties on certain portions of the Property during the Exclusivity Period.

The MOU defines the Exclusivity Period as the earliest of the following: (a) Gambol submits its proposed Business Plan and Conceptual Plan Description in accordance with Section 2 (requiring POLA staff to make a recommendation in a single Board Report on the proposed

¹ All capitalized terms used herein shall have the defined meanings ascribed to them in the MOU.

Business Plan and Conceptual Plan to the Board at a meeting noticed pursuant to the Brown Act), (b) Twelve (12) months from the date of execution of the MOU and, in POLA's judgment, Gambol has not fulfilled its obligations under Section 2, or (c) Gambol's delivery of written notice to POLA's Executive Director of its determination not to proceed with the Proposed Project. Here, the Exclusivity Period remains in effect. In fact, a meeting originally scheduled between Gambol and POLA to discuss the containment method, configuration, and the cost comparisons between the dike and the vertical containment on September 28, 2009 was recently postponed to September 29, 2009.

This is the same date that the Board will hold a hearing to certify the joint Draft Environmental Impact Statement/Environmental Impact Report for the San Pedro Waterfront Project in the Port ("SPWP DEIS/DEIR").

B. The Fueling Station and the MOU

The SPWP DEIS/DEIR proposes a new Berth 240 Fueling Station ("Fueling Station") to replace the services of the existing Jankovich & Son Fueling Station at Berth 74. SPWP DEIS/DEIR, p. 2-37. The operations at the Jankovich & Son Fueling Station would cease on or about June 2012, and the site would be decommissioned. *Ibid.* The Fueling Station would be developed at Berth 240 to be operated pursuant to a 20-year lease, commencing June 2012. SPWP DEIS/DEIR, Tables 2-2 and 2-6. Approving the Fueling Station at the presently contemplated location constitutes a material breach of the MOU.

The proposed improvements at Berth 240 would include a mix of fuel products and tank sizes composed of the following:

1. One 120,000-gallon ultra-low-SULFUR diesel tank;
2. One 50,400-gallon biodiesel tank; and
3. One 6,000-gallon gasoline tank.

Moreover, waterside construction would include the development of approximately 6,400 square feet of new floating docks, to be supported by 46 new piles. The pilings for the proposed new docks would be driven into known toxic sediments which require remediation. See Fugro West and Weston Solutions Reports, 2006-07. Construction is expected to commence in January 2011, with the facility scheduled to become operational by June 2012. SPWP DEIS/DEIR, pp. 2-37 and 2-38. Construction of the new Berth 240 Fueling Station in the Southwest Marine Historic District would require demolition of the existing Compressor Building. SPWP DEIS/DEIR, p. 4-66. The Compressor Building (Building 26) is located in the middle of Berth 240; this bisection effectively renders a large amount of the current barge and ship berthing unusable. In and of itself, the demolition of the Compressor Building would violate the MOU. The Fueling Station would thwart any plans for potential rehabilitation of the Southwest Marine site and similarly frustrate the purpose of the MOU.

President Cindy Miscikowski
and Members of the Los Angeles Board of Harbor Commissioners
September 24, 2009
Page 3

The MOU requires the parties to engage in a collaborative process to facilitate the Proposed Project. Approval of a Fueling Station on the Southwest Marine site during the Exclusivity Period demonstrates bad faith and violates the express conditions of the MOU.

C. Request for Informal Dispute Resolution

In accordance with Section 9 of the MOU, this letter serves as Gambol's written notification and request to meet and confer regarding POLA's potential violation of the terms of the MOU. Gambol requests that the Board refrain from certifying the SPWP DEIS/DEIR until such time that the Fueling Station is removed from the Project Description or relocated to another area.

D. The SPWP DEIS/DEIR Contains an Inaccurate and Incomplete Project Description

In the SPWP DEIS/DEIR, the Los Angeles Harbor Department ("LAHD"), as lead agency, violates the California Environmental Quality Act ("CEQA"), Public Resources Code sections 21000 *et seq.* by failing to disclose and evaluate all project components. The SPWP DEIS/DEIR does not contain any description of the location of the Fueling Station other than a graphical depiction on Figure 2-13 showing the "conceptual layout for the proposed facilities." SPWP DEIS/DEIR, p. 2-37. The document contains no discussion of the selection of this location. The concept plan lacks substance and violates the basic CEQA principle to inform governmental decision makers and the public of potential significant environmental effects of the project.

Based on the MOU, development of a shipyard site is a foreseeable use that must be incorporated into the Project Description. The SPWP DEIS/DEIR determined the primary objectives of the proposed project are to enhance and revitalize the existing San Pedro Waterfront area, to expand cruise ship facilities, to improve vehicular access to the waterfront area, and to demonstrate the LAHD's commitment to sustainability. SPWP DEIS/DEIR, p. 2-11. Gambol seeks to preserve the Southwest Marine site by constructing slips/dry docks for future use as a state of the art, job-creating shipyard. Placing a Fueling Station in the middle of the Southwest Marine site to thwart the proposed shipyard clearly contradicts these objectives.

Further, the SPWP DEIS/DEIR identifies actions that POLA could undertake following certification of the environmental document, including amendments to the Port Master Plan. Specifically,

"[a] general plan amendment would be required to address the new water cuts and harbors and to allow hazardous liquid bulk water and land uses at Berth 240 for the proposed relocation of the fueling facility at this location. The impacts and mitigation measures are discussed in Section 3.8, "Land Use and Planning."

SPWP DEIS/DEIR, p. 3-42. The SPWP DEIS/DEIR states that the City Planning Department should rely on the document for "[z]one changes or amendments, general plan amendments, variances for zoning or parking code requirements." SPWP DEIS/DEIR, p. 1-7. Accordingly, the Project Description is inadequate because it fails to identify the scope of the amendments and zone changes that would be required for the project.

E. The SPWP DEIS/DEIR Fails to Adequately Analyze Land Use Impacts

The SPWP DEIS/DEIR concludes that the project would not result in any significant land use impacts. A general plan amendment is required to address the new water cuts and harbors to allow hazardous liquid bulk water and land uses for the Fueling Station. SPWP DEIS/DEIR, p. 3.8-23. The Fueling Station is "in Planning Area 7 is currently inconsistent with land use designations contained with the Port of Los Angeles Plan." *Ibid.*

Similarly, the Department of Toxic Substances Control ("DTSC") imposed land use restrictions on the GATX Annex Terminal Facility. SPWP DEIS/DEIR, p. 3.6-35. The current proposed use of the GATX Annex Terminal Facility is a park, which use DTSC expressly prohibits. *Ibid.*

The Port of Los Angeles General Plan seeks to guide "the development, betterment and change within the Port to meet existing and anticipated needs and conditions" and to "promote the land and water developments and other trends while balancing growth and stability reflecting economic potentialities and limitations." SPWP DEIS/DEIR, p. 3.8-11. Here, the project is not consistent with these primary purposes by frustrating the intent of the MOU.

The project's failure to consider a shipyard and its insistence of constructing a Fueling Station in the middle of the Southwest Marine and proposed Gambol site, violates Objective 1 of the General Plan, which requires POLA be maintained as an important local, regional and national resource and to promote and accommodate the orderly and continued development of the Port so as to meet the needs of foreign and domestic waterborne commerce, navigation, the commercial fishing industry and public recreational users. SPWP DEIS/DEIR, p. 3.8-12. The existing slips represent an ideal location for one or more new floating drydocks to support POLA's floating infrastructure.

F. Soil and Groundwater Contamination and Additional Hazardous Materials Are Potentially Significant and Unmitigated

The entire site of Berth 240 contains known groundwater and soil contamination, specifically polychlorinated biphenyl ("PCBs") and various heavy metals. SPWP DEIS/DEIR, pp. 3.6-20 through 3.6-22 and 3.7-5. POLA has fenced certain areas of Berth 240 due to PCB contamination. *Id.* at 3.7-6. In connection with these contamination issues, the SPWP DEIS/DEIR relies on non-specific and unenforceable mitigation measures that improperly defer mitigation to a later date.

Mitigation Measure GW-1a requires the LAHD to remediate all contaminated soils within proposed project boundaries prior to or during demolition and grading activities. SPWP DEIS/DEIR, p. 3.6-35. Measure GW-1a improperly defers mitigation to a later date. It calls for soil remediation to be developed as part of the construction process, but fails to describe the specific thresholds and standards to be used. Such thresholds and standards vary greatly from site to site. Measure GW-1a also fails for lack of specificity. It does not define a criteria by which to judge whether a park in the currently prohibited GATX Annex Terminal Facility would adequately follow DTSC's remedial action workplan process under an environmental consultative oversight agreement.

Mitigation Measure GW-1b to contact the Division of Oil, Gas and Geothermal Resources ("DOGGR") to remediate former oil wells in Area A and implement corrective measures as directed by DOGGR similarly defers mitigation. The time to craft and evaluate groundwater soils and hazardous materials impacts is now; POLA must specify the process now and analyze any impacts from the same.

The LAHD relies on Mitigation Measure GW-1c to mitigate potentially significant impacts of exposing soils containing toxic substances and petroleum hydrocarbons associated with prior operations. SPWP DEIS/DEIR, p. 3.6-36. Specifically, abandonment and removal of the Navy fuel surge line would require submittal of a work plan to the California State Fire Marshall ("CSFM") and other applicable agencies, as appropriate. *Ibid.* Should contamination be found, appropriate remedial or removal action will occur prior to or concurrent with construction of the North Harbor and Inner Harbor parking structure, under approval of the appropriate oversight agency. *Ibid.* Measure GW-1c fails for lack of specificity. The SPWP DEIS/DEIR specifies no commitment to a performance standard or criterion that will ensure the mitigation of the significant effect.

Mitigation Measure GW-2 requires the LAHD to prepare a contamination contingency plan for non-specific facilities. SPWP DEIS/DEIR, p. 3.6-36. This mitigation measure improperly defers mitigation to a later date. The contingency plan fails to incorporate timelines within which agency must act upon the discovery of unknown contamination during demolition, grading and construction. Measure GW-2 is so vague that it is impossible to gauge its effectiveness.

G. The SPWP DEIS/DEIR Fails to Adequately Analyze the Historic Impacts of the Fueling Station

The SPWP DEIS/DEIR concludes that the construction of the Fueling Station within the boundaries of the historic district is compatible in use with the district's industrial character. SPWP DEIS/DEIR, p. 3.4-55. However, the Southwest Marine shipyard looms as the last remaining link to San Pedro Bay's significant role in the historic World War II emergency shipbuilding program. In addition, the MOU outlines Gambol's intent to revitalize the site with a modern job-creating shipbuilding facility. As a lead agency, the LAHD had a duty to assess

whether Berth 240 was historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California. CEQA Guidelines § 15064.5(a)(3). Without an adequate project description that contains sufficient detail, no evidence exists that the LAHD has adequately analyzed historic impacts.

H. The Alternative Analysis Fails to Comply with CEQA

A major function of an environmental impact report is to ensure thorough assessment of all reasonable alternatives to proposed projects by those responsible for the decision. *Kings County Farm Bureau v. City of Hanford* 221 Cal.App.3d 692, 733 (1990). The alternatives analysis fails to satisfy the requirement that the lead agency consider a reasonable range of project alternatives which are designed to meet most of the basic objectives of the project and lessen or avoid the significant environmental effects of the project. CEQA Guidelines § 15126.6(a).

Here, the LAHD fails to analyze alternative sites for the Fueling Station. The SPWPD DEIR/DEIS provides no explanation why the Fueling Station must be located in the middle of Berth 240, where hazardous materials and groundwater contamination exists and where Gambol proposes to build a shipyard. CEQA requires discussion of alternatives to provide decision makers and the public with a reasonable picture of the range of feasible choices with lesser environmental impacts. When the lead agency fails to identify alternatives with environmental advantages, the informational purpose of CEQA is not satisfied.

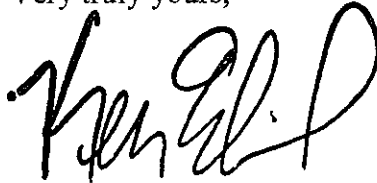
I. Conclusion

The SPWP DEIS/DEIR violates CEQA in many respects. It contains an inadequate Project Description and fails to identify and mitigate many of the project's potential significant impacts. Approving the Fueling Station would breach the MOU. Accordingly, we respectfully

President Cindy Miscikowski
and Members of the Los Angeles Board of Harbor Commissioners
September 24, 2009
Page 7

ask that you not certify the SPWP DEIS/DEIR until such time the LAHD revises and recirculates the SPWP DEIS/DEIR so as to recognize and satisfy the purposes of the MOU.

Very truly yours,



KENNETH A. EHRLICH,
a Professional Corporation of
Jeffer, Mangels, Butler & Marmaro LLP

KAE:aht
Enclosure

cc: Councilmember Janice Hahn, Chair, Trade, Commerce & Tourism Committee
Councilmember Bill Rosendahl
Councilmember Tom LaBonge
Jenny Chavez, Office of Councilmember Janice Hahn
Laura McLennan, Office of Councilmember Bill Rosendahl
Lisa Schechter, Office of Councilmember Tom LaBonge
David Freeman, Office of the Mayor
Geraldine Katz, Executive Director, Port of Los Angeles
Steve Otera, Deputy City Attorney
Janna Sidley, Deputy City Attorney
Linda Dishman, LA Conservancy
Benjamin M. Reznik, Esq.
Amy Tsai-Shen, Esq.

EXHIBIT A

IN WITNESS WHEREOF the Parties have executed this MOU as of the date specified above.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Geraldine Knatz
BY: Geraldine Knatz (Print Name)
ITS: Executive Director (Print Title)

GAMBOL INDUSTRIES

BY: _____ (Print Name)
ITS: _____ (Print Title)

LOS ANGELES CONSERVANCY

BY: _____ (Print Name)
ITS: _____ (Print Title)

APPROVED AS TO FORM:

June 29, 2009
ROCKARD J. DELGADILLO, City Attorney


By TRM
THOMAS A. RUSSELL, General Counsel

IN WITNESS WHEREOF the Parties have executed this MOU as of the date specified above.

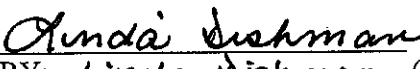
THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

BY: _____ (Print Name)
ITS: _____ (Print Title)

GAMBOL INDUSTRIES


BY: ROBERT A. STEIN (Print Name)
ITS: PRESIDENT (Print Title)

LOS ANGELES CONSERVANCY


BY: Linda Dishman (Print Name)
ITS: Executive Director (Print Title)

APPROVED AS TO FORM:

_____, 2009
ROCKARD J. DELGADILLO, City Attorney

By _____
THOMAS A. RUSSELL, General Counsel

MEMORANDUM OF UNDERSTANDING FOR EXCLUSIVE RIGHT TO NEGOTIATE

This Memorandum ("MOU") is made and entered into as of June _____, 2009 between and among the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Board") of the Port of Los Angeles ("POLA"), a department of the City of Los Angeles; Gambol Industries, Inc., a California corporation ("Gambol"), and The Los Angeles Conservancy ("LAC"), a 501(c)(3) non-profit corporation, in connection with the matters described below. Collectively, POLA, Gambol, and LAC will be referred to as the "Parties".

RECITALS

a. Gambol operates a ship repair and shipbuilding business in the Port of Long Beach, adjacent to POLA and within the same San Pedro Bay port complex. Gambol seeks to operate a shipyard within portions of the former Southwest Marine site. Gambol asserts that it is prepared to invest in excess of \$1,000,000 in the Conceptual Project Description and Business Plan (as specified below). Previously, a portion of the former Southwest Marine site was used as a shipyard and has since been designated as eligible for listing as a historic district in the National Register of Historic Places by the Port of Los Angeles.

b. LAC asserts that it is the countywide historic preservation organization for the Los Angeles area and is the largest local historic preservation organization in the United States, with 7,000 members. Established in 1978, LAC works to preserve and revitalize the significant

architectural and cultural heritage of Los Angeles. LAC claims that over the past three years, they have submitted written comments in conjunction with environmental review for proposed projects that would affect historic resources at POLA, including the Southwest Marine Buildings Demolition Project and the Main Channel Deepening Project. The Environmental Impact Report for the Southwest Marine Buildings Demolition Project was never finalized by the Port and the Port is no longer pursuing the project.

c. On or about April 29, 2009, the Board acted upon the Port's Main Channel Deepening Project ("Channel Deepening Project") (LAHD ADP #990809-102) by: (1) certifying the Supplemental Environmental Impact Report/Supplemental Environmental Impact Statement (SEIR/SEIS) for the Channel Deepening Project, and (2) approving Port Master Plan Amendment No. 24 (PMPA 24).

d. The Channel Deepening Project is vitally important to the POLA. It will deepen the channel to -53 feet Mean Lower Low Water ("MLLW"), thus allowing the new largest class of cargo vessels to access the port. Access of the newest class of vessels is necessary for the POLA to remain competitive. In addition the Channel Deepening Project will beneficially reuse dredge material and confine existing and in-situ contaminated sediments within a Confined Disposal Facility ("CDF") at Berths 243-245.

e. Among other project components, the Channel Deepening Project will fill the slips at Berths 243-245 with contaminated and non-contaminated dredge materials generated by the Channel Deepening Project.

f. Gambol alleges that slips at Berths 243-245 and portions of the former Southwest Marine Site can be put to revenue-generating use as a shipyard and marine center, and believes that the filling of Berths 243-245, as currently described in the Channel Deepening Project,

would prevent such future shipyard and marine center. Gambol further believes that the dredge deposition at Berths 243-245 should be minimized and water access maximized.

g. Gambol and LAC allege that the SEIR/SEIS and PMPA 24 are legally flawed and would be overturned if reviewed by a Court. POLA denies all such allegations and further asserts that the SEIR/SEIS and PMPA 24 are in full compliance with all applicable laws and regulations.

h. On April 30, 2009, POLA filed a Notice of Determination ("NOD") for the Channel Deepening Project in accordance with Public Resources Code § 21108. On June 3, 2009, POLA issued a Notice of Exemption ("NOE") for PMPA 24.

i. On or about May 15, 2009, Gambol appealed the certification of the SEIR/SEIS to the Los Angeles City Council ("City Council"). On May 22, 2009, LAC appealed the certification of the SEIR/SEIS to the City Council. The City Council has yet to rule on either of the pending appeals. On or about June 8, 2009, Gambol forwarded a letter to the California Coastal Commission ("CCC") urging the CCC to reject PMPA 24 and not to make the required consistency determination regarding PMPA 24 in connection with the Coastal Zone Management Act. The CCC has yet to consider PMPA 24 or the related consistency determination.

j. Gambol would like to see the Port make available for use as a shipyard portions of the former Southwest Marine Site. The Parties have initiated discussions regarding Gambol's future development of a shipyard and accommodating receipt of dredge material.

k. This MOU is intended to specify the mutual understanding of POLA, Gambol and the LAC regarding general business terms and to describe the process by which the Parties will proceed to explore the concept of a shipyard in portions of the former Southwest Marine Site. The Parties intend to explore a business plan ("Business Plan") and proposed

conceptual project description for purposes of CEQA (“Conceptual Project Description”) consistent with this MOU.

AGREEMENT

1. **Incorporation.** The above Recitals are incorporated by this reference.

2. **Process for Development of Conceptual Project Description and Business Plan for Shipyard.**
 - a. Gambol will, at its sole cost and expense, prepare and submit to POLA a proposed Business Plan and proposed Conceptual Project Description for a shipyard in portions of the former Southwest Marine Site (“Site”), as attached.
 - b. The proposed Business Plan will address the financial capability of Gambol to develop a shipyard, the economic viability of the shipyard, the projected customer base, which could be used to develop a Term Sheet.
 - c. The proposed Conceptual Project Description will include all components of a project description called for by CEQA.
 - d. Both the proposed Business Plan and Conceptual Project Description will be consistent with the Clean Air Action Plan and other City of Los Angeles rules, regulations, standards and policies and are a necessary process prior to any next steps, including but not limited to CEQA review.
 - e. In order to facilitate Gambol's request for a Proposed Project, POLA agrees to cooperate with Gambol, at no cost to POLA other than reasonable staff time, in connection

with the Proposed Business Plan and Conceptual Project Description.

f. Within twelve (12) months of the execution of this MOU, Gambol will submit the proposed Business Plan and Conceptual Project Description for the proposed shipyard (“Proposed Project”) to POLA. To the extent that Gambol seeks to maintain confidentiality over documents submitted to POLA in connection with the Proposed Project, Gambol will specify the basis for confidentiality upon submission of the subject document(s). If any third-party challenges the confidentiality of such documents, Gambol agrees indemnify, defend and hold harmless the City of Los Angeles and POLA in connection with such challenge.

g. POLA staff shall review the Proposed Business Plan and Conceptual Project Description and, in a single Board Report, provide recommendations to the Board at a meeting noticed pursuant to the Brown Act. If the Board decides to designate the future use of the Southwest Marine site as a shipyard, POLA shall exclusively negotiate with Gambol as the proposed operator, but only provided that the appropriate findings as to the selection of the sole source operator can be made, which findings shall be consistent with City’s Charter and POLA’s leasing policy. The Board shall also direct staff to initiate CEQA review, and business term negotiations with Gambol, which shall not be suspended or terminated without Board direction. Notwithstanding the foregoing, the Board retains its full discretion to proceed in any manner it deems best at such time.

3. Discretionary Process. The Parties acknowledge and agree that: (a) any undertaking of Proposed Project would require the review and subsequent approvals of City entities including, without limitation, the Board and the City Council, which approvals have neither been sought nor obtained, and that entitlements for any proposed project may be granted

or denied if and when submitted for the aforementioned review and approvals. The Parties further acknowledge that the legal effectiveness of any lease document or other entitlement that may authorize the uses underlying the Proposed Project would require compliance with all applicable laws and regulations, which laws may include, without limitation, the California Environmental Quality Act (Public Resources Code Section §21000 et seq. ("CEQA"), the National Environmental Protection Act ("NEPA"), and the California Coastal Act ("Coastal Act"). The Parties further acknowledge that POLA expressly reserves the right to consider all mitigation measures and alternatives for any proposed project, including the "no project" alternative, if such mitigation measures or alternatives are required by CEQA, the Clean Air Action Plan ("CAAP") or other applicable POLA policies. Gambol and LAC further acknowledge that this MOU shall not be construed as a direct or indirect commitment by POLA or any other entity to take or to not take any action, whether under CEQA, NEPA, the Coastal Act or otherwise, in connection with the proposed Conceptual Project Description or any matters set forth in this MOU.

4. **Exclusivity Period.** To the extent that negotiations occur with respect to the Proposed Project, POLA shall negotiate exclusively with Gambol as to the proposed Business Plan and Conceptual Project Description until the earlier occur of: (a) Gambol submits its proposed Business Plan and Conceptual Project Description as set forth in Section 2 above, (b) Twelve (12) months from the date of execution of this MOU and, in POLA's judgment, Gambol has not fulfilled its obligations under Section 2 above, or (c) Gambol's delivery of written notice to POLA's Executive Director of its determination in its sole and absolute discretion that Gambol does not wish to proceed with the Proposed Project. The Exclusivity Period may be extended up to an additional ninety (90) days by the written

mutual agreement of Gambol and POLA, which shall not be unreasonably withheld. During the Exclusivity Period, access to the Site by Gambol shall be prohibited except by written permission by POLA, which shall not be unreasonably withheld in light of Gambol's need to develop a Business Plan and Conceptual Project Description. During the Exclusivity Period, POLA will not enter into any agreement or initiate environmental review regarding: (i) the long term use of the Site, or (ii) the development of any project similar to the Proposed Project within POLA, except for the project initiated by the application for development project submitted by Al Larson Boat Shop in or around June of 2008, unless mutually agreed to by the Parties.

5. **Collaboration.** The Parties intend to engage in a collaborative process to develop an acceptable method to complete the disposal of the dredge material that minimizes the filled portion of the berths and maximizes the water access, in a manner that facilitates the Proposed Project and the Channel Deepening Project consistent with the SEIR/SEIS, as certified by the Board. Each party agrees to utilize a State of California licensed Structural Engineer to work to examine conceptual designs for the CDF that are consistent with the approved SEIR/SEIS, meets with POLA structural design requirements, and attempts to minimize land and maximize water to the extent possible. In this attempt, POLA will solicit the advice of Gambol and LAC, but retains the right to make the final determination on design. (The Parties acknowledge that the SEIR/SEIS, as certified by the Board, allows up to complete filling of Berths 243-245).

6. **Channel Deepening Project.** It is the intention of the Gambol and POLA that nothing in this MOU shall delay the Channel Deepening Project. POLA is free to move forward with the planned demolition work at the Berth 243-245 slips as scheduled, but will initiate the construction of the proposed rock dike foundation, no earlier than February 1, 2010, unless mutually agreed to by Gambol and POLA. POLA shall not absorb any additional costs, other than those already contemplated in the certified SEIR/SEIS, in order to complete any and all aspects of the approved Channel Deepening Project. Within seven (7) days of the date of this Agreement, the Parties shall meet with the intent of agreeing on a schedule for Gambol's submittal, and POLA's consideration and conceptual approval, of CDF engineering design plans for Berths 243-245. During the term of this MOU, the Port shall provide to the Trade, Commerce and Tourism Committee of the City Council monthly reports on the status of the Proposed Project, the development of the proposed Business Plan and Conceptual Project Description, and the CDF engineering design plans for Berths 243-245.

7. **Construction Labor.** Provided that Gambol (or an affiliated Gambol entity) becomes a POLA permittee (tenant) and a project begins construction, Gambol agrees to enter into project labor agreements with all appropriate entities. The Parties agree that no construction is contemplated in the MOU. Any construction in the future would be subject to CEQA.

8. **Third-Party Tenants of Portions of the Property.** The Parties acknowledge that certain third-parties may have, or in the future may have Permit lease rights to certain portions of the Property during the Exclusivity Period (such as Film L.A., Inc., SoCal Ship Services and Jankovitch Marine Fuels in the future). POLA shall not create lease rights

during the Exclusivity Period which frustrates the purpose of this MOU.

9. **Informal Dispute Resolution.** In the event of a future dispute between the Parties regarding this MOU, including but not limited to any and all disputes in connection with this MOU (collectively "Future Disputes"), prior to filing litigation, the Parties shall meet and confer within ten (10) days of written notification and request for a conference to discuss, among other points, their respective positions and measures intended to result in compliance and/or the implementation of obligations encompassed in this Agreement. In the event that this meet and confer process does not resolve all issues, the Parties agree to confer and reserve jurisdiction in the City Councilmember for the 15th District of the City of Los Angeles as a third party neutral to mediate any future disputes prior to filing litigation. To the extent that, within thirty (30) days of the written notice referenced above, the Parties have not resolved all disputed issues, the Parties shall then have the right to pursue all available legal and equitable remedies, including litigation. To the extent that a conflict of interest may exist in that POLA is a department of the City of Los Angeles and the City Councilmember for the 15th District of the City of Los Angeles constitutes an elected official of the City of Los Angeles, Gambol and LAC waives such actual or potential conflict of interest for purposes of this Agreement.

10. **Former Southwest Marine Site.** Prior to any demolition, use or re-use of the buildings at the former Southwest Marine Site, POLA will prepare an Environmental Impact Report. In determining future use/s for the Property, POLA will consider adaptive reuse as an important consideration where it can be applied in a feasible manner and consistent with all applicable laws to projects and project alternatives being considered by the Board.

11. **Release.** Gambol and LAC, and their respective former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing, forever release and discharge the City of Los Angeles and POLA's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing from and against any and all of Gambol's and LAC's rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision which exist as of the effective date of this MOU that are based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with:

- a. the SEIR/SEIS,
- b. PMPA 24,
- c. Gambol's appeal of the SEIR/SEIS to the City Council
- d. LAC's appeal of the SEIR/SEIS to the City Council
- e. Gambol's request to CCC for rejection of the PMPA 24

Gambol and LAC jointly further compromise and settle the matters released above, and agree that this compromise and settlement shall constitute a bar to the assertion of any such matter against POLA. Gambol and LAC jointly covenant and agree never to commence, voluntarily assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted against the City of Los Angeles, POLA and/or POLA's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing in any action, proceeding or defense based in whole or in part upon any of the matters released above.

Gambol and LAC jointly represent and warrant to POLA that: (a) they have not at any time assigned or transferred, or purported to assign or transfer, to any person, firm, partnership, corporation or entity whatsoever, any of the rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision, which exist as of the effective date of this MOU, and which are based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with items a through e above; (b) no subsidiary(ies), or affiliate(s) of Gambol or LAC shall commence, voluntarily assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted any of the matters released above against POLA; and (c) it has the full right, power and specific authority to enter

into, execute and consummate this MOU. Gambol and LAC jointly and severally agree to indemnify, defend and hold harmless, the City of Los Angeles, POLA and POLA's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing from and against any and all rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision, which exist as of the effective date of this MOU, in any way arising from, connected with or related to its assignment or transfer or purported assignment or transfer set forth above by such entity. Gambol and LAC further agree not to indirectly challenge or oppose the Channel Deepening Project.

12. Waiver of Section 1542. There is a risk that, subsequent to the execution of this MOU, a party hereto will discover, incur or suffer loss, damages or injuries which are in some way related to the matters released but which are unknown or unanticipated at the time that this MOU is executed. Each party hereby assumes this risk and understands that THIS AGREEMENT SHALL APPLY TO ALL UNKNOWN OR UNANTICIPATED LOSSES, DAMAGES OR INJURIES RELATED TO THE MATTERS RELEASED ABOVE, AS WELL AS THOSE KNOWN AND ANTICIPATED. Each party hereby expressly acknowledges that each is familiar with section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each party understands and acknowledges the significance and consequence of this specific waiver of section 1542. Having the opportunity to consult with legal counsel, each party expressly waives and relinquishes any and all rights and benefits which it or he/she may have under section 1542 of the Civil Code to the full extent that such rights and benefits may be lawfully waived pertaining to the subject matter of this MOU.

13. Dismissal of Appeal. Immediately upon execution of this MOU, Gambol and LAC shall dismiss, with prejudice, their appeals of the SEIR/SEIS and notify the Coastal Commission that a resolution has been reached and Gambol no longer objects to PMPA 24 and the related consistency determination (and concurrently provide written confirmation of same to POLA's Executive Director). Notwithstanding the provisions of Section 13, Gambol and LAC's failure to comply with this Section immediately shall render this MOU, null and void without further action of Board or Council.

14. Limitations. This MOU does not create binding obligations on the part of the POLA to assign the Property to Gambol or on the part of Gambol to lease the Site from POLA. Neither does this MOU constitute any form of approval of any development on the Site or a shipyard or use of Berths 243-245. The Parties recognize that this MOU is a

summary of the general business terms only. This MOU does not constitute an assignment, permit, license, entitlement for use, or other commitment by POLA to a definite course of action concerning the Proposed Project.

15. Warranties. The Parties to this MOU warrant that no promise or inducement has been offered except as set forth herein, that this MOU is executed without reliance upon any statement or representation by any other party or person or their representatives concerning the nature and extent of injuries, damages, liability or consequences. The Parties warrant that they are legally competent and authorized to execute this MOU and the Parties accept full responsibility therefore.

16. Assignment. Gambol shall not assign or transfer any interest in this MOU.

17. Non Reliance and Third Parties. Each of the parties acknowledges that (i) there are no representations or warranties other than those expressly set forth in this MOU Agreement; and (ii) no party has relied or will rely in respect of this MOU or the processes contemplated hereby upon any document or written or oral information previously furnished to or discovered by it, other than this MOU, including the schedules hereto. POLA will not have or be subject to any liability to Gambol or LAC for actions based on any information contained in this MOU. In addition, this MOU does not create any rights in third parties. This MOU represents the entire agreement of the Parties with respect to the subject matter herein, and merges and supersedes any prior written or oral representations, discussions, understandings, representations or agreements by or between the Parties relating to the subject matter hereof.

18. No Admissions. Neither this MOU nor the settlement which led to it is intended to be and shall not be deemed, construed or treated in any respect as an admission by any person or entity for any purpose.

19. California Law. This MOU shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law principles. This MOU may be modified, altered or amended only by another document in writing signed by all of the parties.

20. Notices. The Parties shall send all notices or other communication necessary under this MOU in writing by personal service, or express mail, Federal Express, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties at their respective addresses as follows:

If to Gambol:

Gambol Industries
1825 Pier D Street
Long Beach, CA 90802
Attn: Robert Stein

With a copy to:

Kenneth A. Ehrlich
Jeffer, Mangels, Butler & Marmaro LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

If to The Los Angeles Conservancy: The Los Angeles Conservancy
523 West Sixth St., Suite 826
Los Angeles, CA 90014
Attn: Linda Dishman/Mike Buhler

If to POLA: Port of Los Angeles
425 South Palos Verdes Street
San Pedro, California 90731
Attn: Geraldine Knatz, Ph.D.

With a copy to: Los Angeles City Attorney's Office
425 South Palos Verdes Street
San Pedro, California 90731
Attn: Thomas A. Russell, Esq.

Any such notice shall be deemed to have been given upon delivery or two business days after deposit in the mail as aforesaid. A Party may change the address at which it desires to receive notice upon given written notice of such request to the other parties.

21. Modification In Writing. This MOU may be modified only by written agreement of all Parties. Any such modifications are subject to all applicable approval processes set forth in the Los Angeles City Charter, the Los Angeles City Administrative Code, or elsewhere.

22. Waiver. A failure of any Party to enforce the MOU upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

23. Severability. Should any part, term, condition or provision of this MOU be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this MOU shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this MOU, then such part, term, condition or provision shall be deemed not to be a part of this MOU; or (b) if such part, term, condition or provision is material to this MOU, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

24. Jurisdiction. Subject to the provisions of Section 9, the Parties consent to the jurisdiction of the Superior Court of the State of California, , for the enforcement of this MOU.

25. Counterparts. This MOU may be signed in counterparts.

[Signatures on Following Page]

IN WITNESS WHEREOF the Parties have executed this MOU as of the date specified above.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

BY: _____ (Print Name)
ITS: _____ (Print Title)

GAMBOL INDUSTRIES

BY: _____ (Print Name)
ITS: _____ (Print Title)

LOS ANGELES CONSERVANCY

BY: _____ (Print Name)
ITS: _____ (Print Title)

APPROVED AS TO FORM:

_____, 2009
ROCKARD J. DELGADILLO, City Attorney

By _____
THOMAS A. RUSSELL, General Counsel

Exhibit "A" – Description of Site

Response to Comments on Final EIR: Gambol Industries (2)

Comment #1: Contractual Obligations under the MOU

As discussed further below, the new fueling station planned for Berth 240 as part of the San Pedro Waterfront Project does not represent a conflict with the Memorandum of Understanding for Exclusive Right to Negotiate (MOU) nor any potential future redevelopment of the Southwest Marine facilities.

Comment #2: Fueling Station and the MOU

The San Pedro Waterfront Project does not call for the relocation of Jankovich to the middle of the former Southwest Marine Site. As discussed in the Draft EIS/EIR, under the proposed Project, Jankovich fueling station operations would cease June 2012, and the site would be decommissioned. A new fueling station would then be developed along the north edge of Berth 240. The new fueling station does not demolish or modify any historic structures that are part of the Southwest Marine Historic District. In addition, Gambol has previously indicated that the fueling station could be accommodated in or adjacent to their development at the Southwest Marine properties. Should Gambol's plan for Southwest Marine move forward, the new fueling station would be designed to accommodate Gambol's redevelopment plans. Staff would then review the final plans for the new fueling station and Gambol's redevelopment, and if they differed significantly from what was assessed in the San Pedro Waterfront EIS/EIR, would include a new environmental assessment. Therefore, the new fueling station does not represent a conflict with the potential future redevelopment of the Southwest Marine facilities.

Comment #3: Request for Informal Dispute Resolution

It is understood that LAHD staff met with Gambol Industries on September 29, 2009 regarding this issue and would be willing to meet again under the terms of the MOU. As discussed above, the new fueling station does not represent a conflict with the potential future redevelopment of the Southwest Marine facility by Gambol Industries and the Board does not need to wait to consider certification of the Final EIR.

Comment #4: The SPWP DEIS/DEIR Contains an Inaccurate and Incomplete Project Description

Contrary to the comment, the San Pedro Waterfront Project Draft EIS/EIR included a complete and accurate description of the proposed fueling station at Berth 240.

As discussed in the Chapter 2 of the Draft EIS/EIR, as part of the proposed Project, a new fueling station would be developed at Berth 240 on Terminal Island. The proposed improvements would include new

storage tanks, new equipment and infrastructure, and spill control dikes along with waterside wharf and dock construction. Figure 2-13 in the Draft EIS/EIR shows a conceptual layout for the proposed facilities and the impacts associated with development of a new fueling station on the site, as well as operation pursuant to a 20-year lease, were fully assessed in the EIS/EIR. Therefore, the EIR does not violate the basic CEQA principle to inform of potential environmental impacts; the Berth 240 fueling station is described and assessed in the EIR.

In regards to the comment on amending the Port Master Plan, an EIR is an assessment of the potential environmental impacts that could occur as a result of a proposed action. An EIR does not serve as the final approval of all project elements. If the Board decided to approve the proposed Project and move forward with the Berth 240 fueling station, as discussed in Chapter 2 and Chapter 3.8 Land Use and Planning, LAHD would need to move forward with an Amendment to Port of Los Angeles Plan (not the Port Master Plan as erroneously reported in the comment). Potential impacts of this Amendment were analyzed in Chapter 3.8. As discussed in Chapter 3.8, the Berth 240 fueling station in Planning Area 7 is currently inconsistent with land use designations contained within the Port of Los Angeles Plan but it is consistent with the Port Master Plan and zoning for the Port contained within the City of LA Zoning Ordinance. The preferred long-range water and land uses for this planning area in the Port of Los Angeles Plan are non-hazardous liquid and nonhazardous dry bulk cargo, general cargo, commercial fishing, Port-related commercial and industrial uses, and institutional uses. The new Berth 240 fueling station in the proposed Project is not consistent with the Port of Los Angeles Plan because it is a hazardous liquid bulk facility.

Therefore, the Berth 240 fueling station would require a General Plan amendment to the Port of Los Angeles Plan. The amendment would change the land use designation to allow hazardous liquid bulk water and land uses at Berth 240. The LAHD and Department of City Planning would be jointly responsible for the amendment and would require a City Planning Commission Recommendation Hearing and City Council approval.

Contrary to the comment, and summarized above, the Draft EIS/EIR does adequately describe the Berth 240 project element and identifies the scope of the amendments and zone changes that would be required if the Board approved and moved forward with the Berth 240 fueling station.

Comment #5: The SPWP DEIS/DEIR Fails to Adequately Analyze Land Use Impacts

Please see response to comment #4, the San Pedro Waterfront adequately analyzes potential impacts to Land Use as a result of the potential Berth 240 fueling station project element. As discussed above, the LAHD would need to obtain an Amendment to Port of Los Angeles Plan prior to moving forward with the Berth 240 fueling station. Therefore, there would be no land use inconsistencies and no significant impacts.

The proposed Project also does not violate the primary purposes of the Port of Los Angeles General Plan. On the contrary, the proposed Project seeks to redevelop the San Pedro Waterfront to achieve the goal of the General Plan State Tidelands Trust by creating a better balance between promoting waterborne commerce and navigation and public access and recreation along the waterfront area. It should be noted

that the Port of Los Angeles currently supports one large ship repair facility with the ability to haul out vessels up to 250 feet and service vessels in-water up to 450 feet and that there are two smaller repair facilities that service ships less than 100 feet. The LAHD is not violating Objective 1 of the General Plan; the Port actively supports the needs of foreign and domestic waterborne commerce, navigation, commercial fisheries and public recreation.

As discussed in response to Comment #2, the new fueling station does not represent a conflict with the potential future redevelopment of the Southwest Marine facilities by Gambol Industries. If LAHD chose to move forward with Gambol's proposal, consistent with LAHD policy, the LAHD would need to issue a Request for Proposal (RFP) for a new shipyard facility in the Port and complete an EIR, which would incorporate the Berth 240 fuel dock.

Comment #6: Soil and Groundwater Contamination and Additional Hazardous Materials are Potentially Significant and Unmitigated

Contrary to the comment, the San Pedro Waterfront Draft EIS/EIR does not rely on non-specific and unenforceable mitigation measures to mitigate groundwater and soil contamination at the Berth 240 site. Chapter 3.6, Groundwater and Soils, presents a comprehensive overview of the contamination at Berth 240 and discloses that the area contains high levels of metals, polychlorinated biphenyls (PCBs), and petroleum hydrocarbons. To reduce environmental impacts at Berth 240, the proposed Project includes two mitigation measures, Mitigation Measure (MM) GW-1 *Complete site remediation* and MM GW-2 *LAHD will prepare a contamination contingency plan for non specific facilities* (MMs GW-1b and GW-1c do not address impacts at Berth 240). As presented in the Mitigation Monitoring Reporting Program (MMRP), all mitigation measures to address groundwater contamination will become an enforceable part of the bid specifications for all construction contracts.

Contrary to the comment, any site remediation would be conducted with agency oversight and in accordance with their remedial requirements. MM GW-1 does set standards for clean up levels by stating "Remediation will occur in compliance with local, state, and federal regulations as described in Section 3.6.3 and as directed by the Los Angeles City Fire Department (LACFD), the Department of Toxic Substance Control (DTSC), and/or the Regional Water Quality Control Board (RWQCB). Soil remediation will be completed such that contamination levels are below health screening levels established by the Office of Environmental Health Hazards Assessment (OEHHA) and/or applicable action levels established by the lead regulatory agency with jurisdiction over the site." Further, the mitigation measure states that unless otherwise authorized by the lead regulatory agency for any given site, areas of soil contamination that will be remediated prior to or in conjunction with project demolition, grading, and construction. Therefore, the measure allows for early clean up if directed by a responsible agency but ties no-directed the construction associated with clean-up to the project construction to reduce exposure and additional air quality, noise and other resources area impacts from two separate construction actions.

GW-2 does not defer mitigation. A contamination contingency plan cannot be developed until final construction plans are approved as it relies on specific dates and phasing which cannot be developed until

a project is approved by the Board. In addition, the mitigation measure includes eight specific provisions that must be included in the plan to ensure the measure will reduce impacts.

While MMs GW-1b and GW-1c do not address impacts at Berth 240, these mitigation measures are also specific and enforceable. As discussed above, both measures will become an enforceable part of the bid specifications for all construction contracts. GW-1b would remediate former wells at the GATX site and GW-1c would mandate that the LAHD abandon and remove the Navy surge pipeline, which would remove all contamination thereby reducing environmental impacts.

Comment #7: The SPWP DEIS/DEIR Fails to Adequately Analyze the Historic Impacts of the Fueling Station

Please see response to Comment #2. The San Pedro Waterfront Project does not call for the relocation of Jankovich to the middle of the former Southwest Marine Site. As discussed in Chapter 3.4 of the Draft EIS/EIR, Cultural Resources, the new fueling station does not demolish or modify any historic structures that are part of the Southwest Marine Historic District. As discussed in Chapter 3.4, the proposed construction of the Berth 240 Marine Fuel Facility within the boundary of the historic district is compatible in use with the district's industrial character. New tanks, equipment, and infrastructure would be built for the proposed fuel facility. The compressor building would be demolished, but this would not constitute an adverse effect since it is a non-contributor to the district. The proposed fuel facility equipment and infrastructure would be low in profile and would not block views to any district contributors. The four proposed fuel facility tanks would be 25 feet in diameter and would be located on an open, currently undeveloped portion of the district. The tanks would be located to the west of the contributing administration building, where public views from Ports O'Call are currently blocked by the existing Exxon Mobil site. The tanks would not block public views to the administration building from Ports O'Call east of the Exxon Mobil site. Therefore, the proposed fuel facility would constitute an effect because it would be constructed within the district boundary, but it would not be adverse as it would not represent an introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features, or any other criteria. The Berth 240 fueling station would be developed on vacant land and would not affect any of the contributing resources. Impacts to this historic district would be less than significant because the proposed Berth 240 fueling station would be compatible with the district's industrial character.

Comment #8: The Alternatives Analysis Fails to Comply with CEQA

The San Pedro Waterfront EIS/EIR presents a reasonable range of alternatives. Under both CEQA and NEPA, lead agencies are required to evaluate a "reasonable range" of alternatives but are not required to evaluate every possible alternative. According to the Council on Environmental Quality (CEQ), "[w]hen there are potentially a very large amount of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS" (CEQ Forty Questions, No. 1b). Under CEQA, "an EIR need not consider every conceivable alternative to a project" (CEQA

Guidelines Section 15126.6(a)). The “range of alternatives required in an EIR is governed by a ‘rule of reason’ that requires an EIR to set forth only those alternatives necessary to permit a reasoned choice” (CEQA Guidelines Section 15126.6(f)). The Draft EIS/EIR contained six alternatives (seven including the proposed Project), discussed in Section 2.5. These six alternatives provide variations among 36 components incorporated into the proposed Project shown in Figure ES-4 and Table 2-6. In addition, please see response to Comment #2 The San Pedro Waterfront Project does not call for the relocation of Jankovich to the middle of the former Southwest Marine Site. Should Gambol’s plan for Southwest Marine move forward, the new fueling station would be designed to accommodate Gambol’s redevelopment plans. Staff would then review the final plans for the new fueling station and Gambol’s redevelopment, and if they differed significantly from what was assessed in the San Pedro Waterfront EIS/EIR, would include a new environmental assessment. Therefore, the new fueling station does not represent a conflict with the potential future redevelopment of the Southwest Marine facilities.

Comment #9: Conclusion

As discussed in the responses to the above comments. As presented, the San Pedro Waterfront EIR does not violate CEQA and recirculation is not necessary, nor warranted.

From: Felicia Sheerman
To: [Cegacomments;](#)
Subject: San Pedro Waterfront DEIS/DEIR Comments (POLA Website Referral)
Date: Wednesday, September 16, 2009 10:06:11 AM

Dear Gentlemen;

We've been following the Draft Environmental Impact Reports for the San Pedro Waterfront Project and understand the EIR final report is up for final consideration. We believe a NA monitor from the Gabrieleno Band of Mission Indians is essential for this project. We understand Mr. Anthony Morales has consulted on this project, but he represents only his immediate family and does not represent the Gabrieleno Indians as a whole.

We'll be attending the public meeting on September 22, 2009 to further voice our concerns. We have the largest documented members of the Gabrieleno Indians and due to this fact, we are the best selection to represent our people as a whole for this project.

Should you have any questions or comments, please contact us via email at gabrielenoindians@yahoo.com or my cell number is 626-926-4131.

Sincerely,

Andy Salas
MLD/NA Monitor
Gabrieleno Band of Mission Indians

Response to Comments on Final EIR: Gabrieleno Band of Mission Indians

Comment #1

Thank you for your comment. Please note, the Final EIR hearing is September 29, 2009 and we welcome your participation at the hearing. Please see below mitigation measure included in the Final EIR (Section 3.4). The Los Angeles Harbor Department (LAHD) has not identified any individual to consult with if any Native American remains are found as a result of the proposed Project or Alternative. If such remains are found, as stated below, LAHD will contact and work with the California Native American Heritage Commission (NAHC) to identify appropriate contacts within the Native American groups.

MM CR-3: Stop Work If Unanticipated Cultural Resources Are Identified During Ground Disturbing Activities.

In the event that any artifact or an unusual amount of bone, shell, or non-native stone is encountered during construction, work will be immediately stopped and relocated from that area. The contractor will stop construction within 100 feet of the exposure of these finds until a qualified archaeologist, retained by LAHD in advance of construction, can be contacted to evaluate the find (see 36 CFR 800.11.1 and pertinent CEQA regulations). Examples of such cultural materials might include concentrations of ground stone tools such as mortars, bowls, pestles, and manos; chipped stone tools such as projectile points or choppers; flakes of stone not consistent with the immediate geology such as obsidian or fused shale; trash pits containing bottles and/or ceramics; or structural remains. If the resources are found to be significant, they will be avoided or will be mitigated consistent with SHPO guidelines as appropriate. All construction equipment operators will attend a pre-construction meeting presented by a professional archaeologist retained by LAHD to review types of cultural resources and artifacts that would be considered potentially significant to ensure operator recognition of these materials during construction.

If human remains are encountered, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains. The Los Angeles County Coroner will be contacted to determine the age and cause of death. If the remains are not of Native American heritage, construction in the area may recommence. If the remains are of Native American origin, the most likely descendants of the deceased will be identified by the NAHC. LAHD and the USACE will consult with the Native American most likely descendant(s) to identify a mutually acceptable strategy for treating and disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98. If the NAHC is unable to identify a most likely descendant; if the descendant fails to make a recommendation within 24 hours of being notified by the NAHC, LAHD, or the USACE; and if the descendant is not capable of reaching a mutually acceptable strategy through mediation by the NAHC, the Native American human remains and associated grave goods will be reburied with appropriate dignity on the proposed project site in a location not subject to further subsurface disturbance.