

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

December 3, 2010

VIA E-MAIL (ARMS@POLB.COM) AND U.S. MAIL

Matthew Arms
Senior Environmental Specialist
Port of Long Beach
925 Harbor Plaza
P. O. Box 570
Long Beach CA 90801

CITY OF LOS ANGELES
RECEIVED
2010 DEC -6 PM 12: 34
CIV. BR. HARBOR DIV.
CITY ATTORNEY'S OFFICE

Re: Gambol Industries, Inc.'s Comments on POLB's Proposed Middle Harbor
Redevelopment Project ("MHRP") Fill Plan

Dear Mr. Arms:

Pursuant to your invitation and that of the Contaminated Sediments Task Force to Gambol Industries to submit additional information, this letter follows the November 17, 2010 meeting ("Meeting") of the Contaminated Sediments Task Force ("CSTF") regarding Phase I of POLB's proposed MHRP fill plan. At that meeting, POLB announced its proposed MHRP fill plan, which rejected POLA's application to place in the MHRP sediments from POLA's Main Channel Deepening Project ("MCDP") and from within POLA Berths 243-245. POLB's acceptance of these sediments would have facilitated Gambol's shipyard proposal. Consistent with Gambol's comments at the meeting, Gambol respectfully requests that POLB reconsider its position on MCDP and Berth 243-245 fill.

Gambol understands POLB's position, as stated at the Meeting that, if Gambol disagrees with POLB's rejection of POLA sediments, Gambol should raise its concerns with POLA. This is because, among other points, POLA failed to submit a dredge plan and other materials repeatedly requested by POLB following the submission of POLA's MHRP application. However, in addition to raising such issues with POLA, Gambol bases its reconsideration request on the following points.

First, Gambol disagrees with POLB's claim that certain of the POLA MCDP sediments, specifically the 160,000 cubic yards in the Berth 243-245 dry dock slips, constitute "hazardous waste", which renders the material unacceptable for the MHRP. POLB correctly asserts that Berth 243-245 in-slip testing by POLA's contractor in 2005 and/or 2007 revealed approximately five (5) samples out of more than 100 that could be classified as "hazardous".

However, testing by Gambol's contractor in 2010 revealed no such "hazardous" samples in this exact area of the berths. To the extent that POLB does not agree that Gambol's 2010 sampling supersedes the previous POLA sampling, Gambol requests the opportunity to complete STLC testing on samples from this in-slip area. STLC analysis should remove any doubt that, contrary to POLA's results, this material is not hazardous. Alternatively, Gambol requests a short period of additional time in which to persuade POLA to submit the requested dredge plan. Clearly, if POLA submits an acceptable dredge plan for the Berth 243-245 in-slip sediments, this entire issue becomes moot.

POLB's present position fails to distinguish the Berth 243-245 in-slip sediments from the remainder of the sediments generated by the MCDP that POLA applied to dispose of at the MHRP. None of the MCDP sediments constitutes "hazardous waste" and their deposit in the MHRP should be accepted. In fact, the chemical and geologic characteristics of the MCDP sediments correspond to the base layers of sediments needed for Phase I of the MHRP. Thus, at the very least, POLB should view the MCDP sediments separately and distinctly from the Berth 243-245 in-slip sediments proposed to be deposited in the MHRP.

Second, we disagree with POLB's reasoning that the POLA material should be rejected because it otherwise has a permitted "home" in a confined disposal facility ("CDF") to be built as part of the MCDP at Berths 243-245. The fact that POLA already has permits to dispose of the subject material in a future POLA CDF should be irrelevant to POLB's decision making. Analyzing the beneficial reuses of both the "donor" area and the "recipient" areas of the subject sediments shows that the MHRP constitutes a superior home for the materials than a CDF at POLA's Berths 243-245.

Here, facilitating a future shipyard at Berths 243-245 would constitute a true beneficial reuse of the Berth 243-245 area as the shipyard would provide a wide range of benefits to both San Pedro Bay ports and the region at large. For example, in addition to the direct benefits provided to POLB to facilitate the MHRP, POLB's acceptance of POLA fill would facilitate a modern, sustainable shipyard which would provide hundreds of much needed high paying, skilled jobs as well as resource with significant regional maritime benefits. Moreover, marine resources and the public are benefitted far more by placing the subject material in a fill specifically designed for a future state-of-the-art, environmentally advanced container facility (POLB's Middle Harbor project) than filling eight (8) precious acres of open water with a CDF that has no future intended use or land use designation (POLA's CDF at Berths 243-245).

Third, POLB would achieve a substantial cost savings by accepting the POLA sediments at the MHRP. Specifically, acceptance of the MCDP and Berth 243-245 in-slip sediments displaces an equal amount of Borrow Pit and/or Western Storage site and materials to be dredged by POLB. According to Gambol's calculation, POLB would achieve a cost savings in excess of \$7.7 million dollars ($\$332,000 \text{ CY} \times \$24 \text{ per CY} = \$7,752,000$). Moreover, unless POLB immediately finds substitute fill materials, since we understand that POLA will not provide the China Shipping surcharge materials, POLB must find or dredge at least another 307,000 CY of material to replace the China Shipping material, which equates to an additional

\$7,000,000 in POLB costs. In total, accepting the POLA materials represents a potential \$15 million dollars in costs savings to POLB.

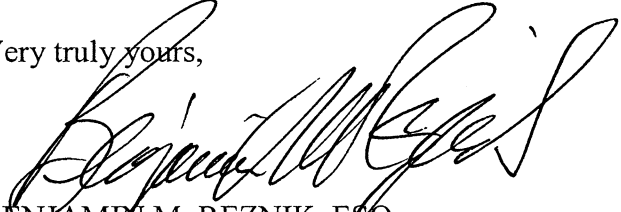
Gambol understands that POLB and the CSTF have sought for the MHRP to accept as much fill from the maximum number of different sources. However, this goal should not prevent a critical analysis and evaluation of the proposed "donor" sites. As the acceptance of the subject material is quite time sensitive to allow the MCDP to remain on schedule, POLB should consider accepting the POLA material for Phase I of the MHRP and accept less time-sensitive materials for Phase II.

Finally, POLB has repeatedly expressed that the initial, tentatively accepted MHRP donors will be rejected if they cannot conform to POLB's strict fill schedule. Gambol has significant concerns that many tentatively accepted donors will not be able to meet the strict schedule due to incomplete CEQA/NEPA analysis, funding problems, differing priorities, logistical factors, or other issues. For example, Gambol has learned from multiple sources that POLA does not plan to give its tentatively accepted 307,000 cubic yards of China Shipping surcharge materials to POLB if POLB does not accept the remainder of POLA's MCDP sediments. It would also be next to impossible for other tentatively selected donors to meet POLB's schedule if they have not yet begun the environmental study required to collect and move their material to the MHRP. Gambol requests that POLB remain open to reconsidering its accepted donors, especially POLA and its MCDP materials, in light of the potential for unforeseen problems.

Gambol would equally appreciate POLB's continuing consideration of the subject materials for Phase II of the MHRP. In the interim, Gambol will explore alternative arrangements with POLA that would maintain MCDP scheduling and preserve sediments for future disposal, such as the prospect of storing 163,000+ cubic yards of MCDP-generated sediments at an alternate site until Phase II is ready to accept same.

We appreciate the opportunity of commenting on the tentative fill plan, and look forward to continuing discussions. Please contact our office with questions or comments.

Very truly yours,



BENJAMIN M. REZNIK, ESQ.
KENNETH A. EHRLICH, ESQ., of
Jeffer Mangels Butler & Mitchell LLP

KAE:pjo-

cc: Jack Gregg, California Coastal Commission, CSTF Co-Chair
Michael Lyon, Los Angeles Regional Water Quality Control Board, CSTF Co-Chair

Matt Arms
December 3, 2010
Page 4

Kenneth Wong, U.S. Army Corps of Engineers, CSTF Advisor
Richard D. Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Austin Beutner, First Deputy Mayor and Chief Executive for Economic
and Business Policy, Office of the Mayor, Los Angeles
David Reich, Office of the Mayor, Los Angeles
Carmen Trutanich, Los Angeles City Attorney
Ken Mattfeld, Los Angeles Deputy City Attorney, POLA
Steve Otera, Los Angeles Deputy City Attorney, POLA
Hon. Janice Hahn, Los Angeles City Council Member, CD15
Jenny Chavez, Los Angeles Deputy Chief of Staff, CD15
Linda Dishman, Executive Director, Los Angeles Conservancy
Cindy Miscikowski, President, Board of Harbor Commissioners
David Arian, Vice President, Board of Harbor Commissioners
Robin Kramer, Member, Board of Harbor Commissioners
Kaylynn Kim, Member, Board of Harbor Commissioners
Douglas Krause, Member, Board of Harbor Commissioners