

MEMORANDUM OF UNDERSTANDING
(Settlement Agreement)

COUNCIL APPROVAL
DATE: 6-6-00 AGENDA # K-1

WHEREAS, the County of Ventura ("County"), acting by and through Lyn Krieger, its Harbor Department Director, and the City of Oxnard ("Oxnard"), acting by and through Matthew G. Winegar, its Development Services Director, have met and discussed a potential resolution of the issues raised by the County's appeal ("Appeal"), filed March 2, 2000, of the Oxnard Planning Commission's Resolution No. 2000-08, dated February 17, 2000, by which Oxnard certified Supplemental Environmental Impact Report No. 98-2 (the "SEIR"); and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), Oxnard is currently using the SEIR as the environmental document for Tentative Subdivision Map No. 5196, which is known as Westport at Mandalay Bay ("Westport Project"); and

WHEREAS, Oxnard is processing the Westport Project in connection with an application submitted by LB/L SunCal Mandalay LLC ("SunCal") to develop 58.3 acres within an area known as Mandalay Bay Phase IV Specific Plan area; and

WHEREAS, the representatives of the County and Oxnard have presented to their respective governing bodies, in closed session, the points set forth hereinbelow as constituting what the representatives recommend should form the basis for an acceptable resolution of the issues raised by the Appeal; and

WHEREAS, the County is willing to withdraw the Appeal promptly after the execution of this Memorandum of Understanding (Settlement Agreement) ("Agreement") by the governing bodies of both the County and Oxnard; and

WHEREAS, upon the execution of this Agreement by the governing bodies of the County and Oxnard, the County and Oxnard shall thereby be deemed to have settled the issues raised by the Appeal on the basis of the points set forth in this Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the County and Oxnard, having each considered the points hereinbelow, do by executing this Agreement, agree to the following:

- 1. (a) To ensure that the County can adequately patrol the waterway areas north of the Channel Islands Boulevard Bridge ("Bridge") in Mandalay Bay ("Existing Mandalay Bay Waterways") and the proposed waterways in the Westport Project ("Westport Waterways") (a map depicting the Existing Mandalay Bay Waterways and the Westport Waterways is attached hereto as Exhibit A and incorporated herein by this reference), Oxnard agrees to enter into a service agreement with the County ("Service Agreement") granting the County,

its Harbor Department ("Harbor Department"), and its harbor patrol officers, the authority to enforce any and all applicable Oxnard ordinances, as well as any and all applicable County, State, and federal laws (as shall be further specified in a Service Agreement) in the Existing Mandalay Bay Waterways and in the Westport Waterways.

(b) The County and Oxnard acknowledge that the Service Agreement shall allow Oxnard to assume enforcement, patrol, and response activities in the future, subject to Oxnard having met certain conditions to be specified in the Service Agreement. The Service Agreement shall further provide that the County shall retain the joint power to patrol and issue citations for violations within the Existing Mandalay Bay Waterways and the Westport Waterways and, further, that the County shall continue to be compensated for patrol services, pursuant to the terms of Paragraphs 3 and 5, below, as shall be confirmed in the Service Agreement.

(c) The Service Agreement will contain terms similar in form to those provided in agreements for police services provided by the County to various cities within the County of Ventura and will provide that the Harbor Department provide patrol services, enforcement of all applicable Oxnard ordinances, as well as all applicable County, State and federal laws, and response services for the Existing Mandalay Bay Waterways and the Westport Waterways.

2. Oxnard agrees to impose a requirement on SunCal as the developer of the Westport Project that SunCal form a community facilities district ("CFD") with respect to the Westport Project to fund certain costs as provided in Paragraph 5, below.

3. To ensure that the entrance to the Channel Islands Harbor ("Harbor Entrance") is properly maintained, Oxnard agrees to cause SunCal to include in the CFD a provision for the annual payment to the County Harbor Department of an amount equal to the "Westport Pro Rata Share" (defined in Paragraph 5, below) of the reasonably estimated cost of dredging the Harbor Entrance ("Dredging Cost") that will be undertaken by the County if (a) the U.S. Army Corps of Engineers ("Corps") stops dredging the Harbor Entrance due to (1) over-construction and related wear and tear on the Harbor Entrance, or (2) an inadequate ratio of commercial vessels relative to recreational vessels using the Harbor Entrance, and (b) either of such conditions is determined by the Corps to have resulted from the incremental increase in vessel traffic caused by the Westport Project. The obligation of the CFD to pay any Dredging Cost is conditioned upon the occurrence of the events described in clauses (a) and (b) of this Paragraph 3.

4. (a) To determine the environmental effects of a potential cessation of operation of the Mandalay Power Generation Plant ("Mandalay Plant") on the water flow and water quality (1) in the Channel Islands Harbor south of the Bridge ("Channel Islands Harbor

South”), (2) in the Existing Mandalay Bay Waterways, and (3) in the Westport Waterways, Oxnard shall impose upon SunCal as a condition of approval of the Westport Project that SunCal hire an environmental consultant, approved by the County, to undertake and complete, prior to finalizing the formation of the CFD, an environmental modeling study of waterflows in the Channel Islands Harbor South, the Existing Mandalay Bay Waterways, and in the Westport Waterways (the “Study”).

(b) Such condition shall also require the scope of work for the Study to be approved by the Development Services Director and the Harbor Department Director before the Study is commenced. The Study shall be based on the assumption that the Mandalay Plant has ceased to be operated in the present manner. The Study shall evaluate waterflows within the Channel Islands Harbor South, Existing Mandalay Bay Waterways, and Westport Waterways with regard to the effect, if any, that cessation of operation of the Mandalay Plant would have on the maintenance of current water quality within each of the three areas considered alone and in conjunction with each other and shall determine the percentage of water quality degradation, if any, that would occur as each of the three above-named waterway systems is added to the Study’s system (including the channel leading from the Westport Waterways northward to the Mandalay Plant), starting with the Channel Islands Harbor South (“County Percentage Share”), then adding to it the Existing Mandalay Bay Waterways (“Oxnard Percentage Share”), and finally adding to both of the above waterway systems, the Westport Waterways (“Westport Percentage Share”).

(c) In addition, the Study shall determine the most efficient alternative for remediating such water quality degradation (“Remediation Measure”) and the cost of implementing such remediation (“Remediation Cost”).

(d) If the Study shows that, following closure of the Mandalay Plant, the water flows or water quality within the Channel Islands Harbor South, the Existing Mandalay Bay Waterways, or the Westport Waterways would be degraded below generally accepted State standards, then, in order to achieve water flows and water quality consistent with such standards, the County and Oxnard agree to implement the Study’s Remediation Measure at the time of closure of the Mandalay Plant and to the extent that such water quality and water flow remediation is not otherwise satisfied by conditions placed on the owners or operators of the Mandalay Plant by regulatory agencies at the time of its closure. Such remediation shall be accomplished in the following manner:

(1) As a condition of approval of the Westport Project, Oxnard shall require SunCal to include provisions for funding by the CFD of the Westport Percentage Share, if any, of the Remediation Cost of implementing the Remediation Measure; provided, however, that the County and Oxnard agree that the Westport Percentage Share of such cost shall not exceed 20 percent of the overall Remediation Cost of the entire Channel Islands Harbor

South, Existing Mandalay Bay Waterways, and Westport Waterways ("Westport 20 Percent Cap"), as identified in the Study.

(2) The County agrees to pay the County Percentage Share, if any, and, in addition, to pay a portion of the Westport Percentage Share that exceeds the Westport 20 Percent Cap, if any. The County shall pay the percentage of said excess that is determined by taking the County Percentage Share and dividing it by the sum of the Oxnard Percentage Share and the County Percentage Share.

(3) Oxnard agrees to pay the Oxnard Percentage Share, if any, and, in addition, to pay a portion of the Westport Percentage Share that exceeds the Westport 20 Percent Cap, if any. Oxnard shall pay the percentage of said excess that is determined by taking the Oxnard Percentage Share and dividing it by the sum of the Oxnard Percentage Share and the County Percentage Share.

(4) The County and Oxnard further agree to have the Study updated ("Updated Study") at the time closure of the Mandalay Plant is approved and to implement such Updated Study's remediation measure in lieu of the Remediation Measure identified in the initial Study, defined above.

(5) Oxnard shall require SunCal to pay the entire cost of the initial Study; the County and Oxnard shall each pay one-half of the cost of the Updated Study.

(6) The County and Oxnard agree to submit any dispute between them regarding the initial Study or the Updated Study to the environmental consultant hired by SunCal pursuant to Paragraph 4(a) under the conditions mentioned above, or if such consultant is unavailable, then to a consultant satisfactory to both the County and Oxnard.

5. (a) The CFD special tax shall be subject to and shall include a two percent annual escalator each and every year after the first year it is imposed. The CFD special tax shall be set at a rate sufficient to raise funds to pay (1) One Hundred Thirty-Five Thousand Dollars (\$135,000) per year toward the cost of providing the services contemplated by the Service Agreement; (2) the Westport Pro Rata Share of the Dredging Cost (the initial value for such cost shall be set at zero (0), because the Corps currently dredges the Harbor Entrance); and (3) the Westport Percentage Share of the Remediation Cost described in Paragraph 4, above (the initial value for such costs shall be set at zero (0), because the Mandalay Plant is currently in operation in a manner that provides adequate water circulation).

(b) The County agrees to pay the County Share and Oxnard agrees to pay the Oxnard Share of any Dredging Cost should the Corps cease dredging the Harbor Entrance for the reasons stated in Paragraph 3, above.

(c) The County Share of any Dredging Cost shall be equal to the product of the annual cost of dredging the Harbor Entrance times a fraction, the numerator of which is the total number of boat slips within the Channel Islands Harbor South and the denominator of which is the aggregate number of boat slips in the Channel Islands Harbor South, the Existing Mandalay Bay Waterways, and the Westport Waterways, as such waterways may be expanded by the annexation to such waterways of additional waterways from time to time.

(d) The Oxnard Share of any Dredging Cost shall be equal to the product of the annual cost of dredging the Harbor Entrance times a fraction, the numerator of which is the total number of boat slips within the Existing Mandalay Bay Waterways and the denominator of which is the aggregate number of boat slips in the Channel Islands Harbor South, the Existing Mandalay Bay Waterways, and the Westport Waterways, as such waterways may be expanded by the annexation to such waterways of additional waterways from time to time.

(e) The "Westport Pro Rata Share" of any Dredging Cost shall be equal to the product of the annual cost of dredging the Harbor Entrance times a fraction, the numerator of which is the total number of boat slips within the Westport Project Waterways and the denominator of which is the aggregate number of boat slips in the Channel Islands Harbor South, the Existing Mandalay Bay Waterways, and the Westport Waterways, as such waterways may be expanded by the annexation to such waterways of additional waterways from time to time.

(f) In the event of additional project development that includes boat slips connected to the waterways covered by this Agreement, or the addition of boat slips to such waterways, the numerators and denominator for all three dredging cost shares, defined above, shall be deemed increased at that time and any subsequent payment of the percentage shares shall be adjusted accordingly. The anticipated ratios are set forth in Exhibit B hereto.

(g) The parties currently estimate that the annual Westport Pro Rata Share, prior to the two percent yearly escalator, would be approximately \$68,100 maximum (that is, 4.54 percent of the estimated \$3,000,000 biannual cost of dredging the Harbor Entrance) and that the Westport 20 Percent Cap, prior to the two percent yearly escalator, would be approximately \$46,200 (that is, 20 percent of the \$231,000 estimated cost of running pumps at the Mandalay Plant sufficient to maintain current water quality and water flows).

(h) The parties shall provide notice of the amount of the special tax to the tax assessor before July 1 each year, and shall provide notice to the owners of each affected property within the Westport Project before July 1 of each year wherein the rate for the Westport Pro Rata Share or Westport Percentage Share component of the CFD special tax is altered.

6. Oxnard further agrees that the Harbor Department shall have review authority as to all new dock plans in the Existing Mandalay Bay Waterways and in the Westport Waterways before Oxnard issues any dock construction permit. The Harbor Department review shall be prior to issuance of any dock construction permits by Oxnard, but shall be limited to the County's obtaining information regarding dock location only.

7. Oxnard agrees to require, as a condition of Westport Project approval, that SunCal reimburse the County for the reasonable costs of retaining an engineer to review construction drawings for the earthen levee to remain between the existing canals in the Existing Mandalay Bay Waterways and the proposed canals for the Westport Project and to permit such engineer to review such drawings before Oxnard issues any permits to dig any canals in the Westport Project area.

8. (a) To mitigate impacts on the Channel Islands Harbor infrastructure that are expected to result from the Westport Project, Oxnard agrees to require as a condition of approval of the Westport Project that SunCal, or SunCal's successor in interest, pay a harbor mitigation fee of \$200,000, the first half of which (\$100,000) shall be required to be paid directly to the Harbor Department upon recordation of Subdivision Map No. 5196, and the second half of which (\$100,000) shall be required to be paid by the applicant for the transient dock permit directly to the Harbor Department at the time of issuance of the first permit for construction of the first transient dock within the Westport Project.

(b) For the purposes of maintaining water quality levels within generally accepted State standards in the Existing Mandalay Bay Waterways and Westport Waterways, and providing adequate boater-related facilities for the future occupants of the Westport Project, the County will provide information gathered from the Department of Boating and Waterways, the experience of Southern California harbor masters, and other relevant sources to Oxnard concerning the standards and practices regarding boater-related facilities. Such facilities may include, but may not be limited to, boat pumpout stations, guest docks, and restroom facilities. Based upon these materials, the County will recommend to Oxnard the appropriate numbers and types of boater-related facilities needed to be incorporated into the construction of the transient docks within the Westport Project for the purposes of water quality maintenance and adequate boat operator support.

(c) Oxnard shall require as a condition of approval of the Westport Project that space and appropriate easements be provided within the Westport Project for such facilities. Whenever a transient dock facility is built within the Westport Project, Oxnard shall also require of the permit applicant, as a condition of permit issuance for any such dock, the concurrent construction and agreement to provide ongoing maintenance for such facilities at the expense of the permit applicant. The required facilities may include, but may not necessarily be limited to, a boat pumpout station or a public restroom, or both.

(d) The CFD will not fund the construction or maintenance of any such future boater related facilities.

9. (a) Promptly following the execution of this Agreement by the governing bodies of the County and Oxnard, the County agrees to withdraw the Appeal and not to file any further challenge (administrative or judicial) to the Westport Project or regarding enforcement of the conditions thereof. Should Oxnard fail to perform as agreed herein, Oxnard agrees that the County may seek specific performance of this Agreement, or may obtain any other appropriate remedy, and that the County may make any challenge the County deems appropriate to the Westport Project, including challenges based on CEQA, regardless of its having withdrawn the Appeal, so long as any challenges based on CEQA are made within the time limits provided by law for CEQA challenges to any Westport Project approval.

(b) Nothing in this Agreement shall be construed to limit the right of the County to pursue available legal remedies the County may otherwise have for any failure by Oxnard to enforce a mitigation measure or any other condition adopted in connection with Oxnard's approval of the Westport Project, including but not limited to seeking relief in court.

10. Oxnard reserves the right to deploy police and fire emergency response teams including, but not limited to, dive and swift water rescue teams and equipment as well as emergency response boats and personnel in the Existing Mandalay Bay Waterways and in the Westport Waterways. Further, the County and Oxnard agree to cooperate in cross-training programs for harbor patrol, police, and fire personnel as well as in the acquisition of boats and equipment to augment Oxnard's services in the Existing Mandalay Bay Waterways and Westport Waterways.

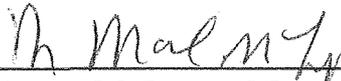
11. (a) This Agreement supercedes any and all other agreements, either oral or in writing, between the County and Oxnard with respect to the subject matter hereof. The County and Oxnard acknowledge and agree that no representations, inducements, promises or agreements, other than as specifically set forth herein, have been made by either party, or anyone acting on behalf of any party with respect to the subject matter hereof.

(b) Any and all amendments hereto must be made in a writing signed by the chairs for the County Board of Supervisors and the Oxnard City Council after receiving approval of such governing bodies. The County and Oxnard agree that this Agreement was drafted by both the County and Oxnard and shall not be construed for or against either party as a result thereof.

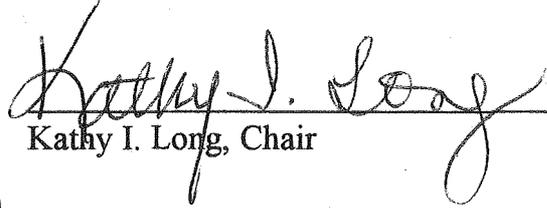
12. This Agreement is deemed executed and effective this 6th day of June, 2000.

CITY OF OXNARD

COUNTY OF VENTURA
BOARD OF SUPERVISORS



Dr. Manuel M. Lopez, Mayor



Kathy I. Long, Chair



ATTEST:



Daniel Martinez, City Clerk

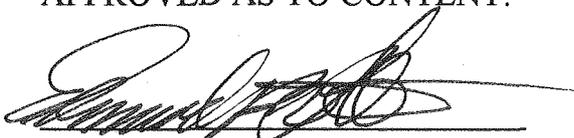
ATTEST:

Richard D. Dean, County Clerk,
County of Ventura, State of
California, and ex officio Clerk of
the Board of Supervisors

By: 

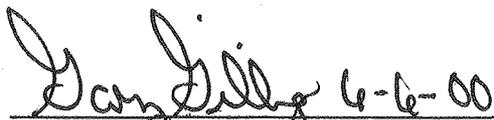
Roberta Rodriguez
Deputy Clerk

APPROVED AS TO CONTENT:



Edmund F. Sotelo, City Manager

APPROVED AS TO FORM:

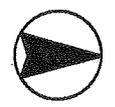


Gary L. Gillig, City Attorney

APPROVED AS TO FORM:



James L. McBride, County Counsel



Scale: 1" = 500'
0 500 Feet

Exhibit A



EXHIBIT B

COUNTY & WESTPORT BOAT SLIPS

MARINA	NUMBER OF SLIPS
Anacapa Isle Marina (P*)	484
Anacapa Marine Services (P)	21
Bahia Cabrillo Yacht Landing (P)	90
Channel Islands Boat Yard (P)	58
Channel Islands Landing (P)	60
Channel Islands Marina (P)	573
Cisco Sportfishing	32
Fisherman's Wharf (P)	8
Pacific Corinthian Marina (P)	148
Peninsula Yacht Anchorage (P)	381
Ventura County Commercial Fishing Marina (C*)	68
Ventura County Small Boat Marina (C)	120
Vintage Marina (P)	385
COUNTY HARBOR SUBTOTAL	2,428
Westport at Mandalay Bay Slips (P)	151
Existing Mandalay Bay Slips (P)	750
TOTAL	3,329

*C - County operated facility; (P) - Privately operated

MOU Ratios: Westport Share = Westport at Mandalay Bay Slips/Total (or 4.54%)**
 Oxnard Share = Existing Mandalay Bay Slips/Total (or 22.53%)
 County Share = County Harbor Subtotal/Total (or 72.93%)

** These ratios were determined pursuant to Paragraph 5 of the Agreement. Pursuant to Paragraphs 3 and 5 of the Agreement, these percentages are to be multiplied by the total annual cost of dredging the Harbor Entrance to obtain the dollar amount due from the County, Oxnard, and the Westport Project's CFD.