



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: MARCH 7, 2023

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVE TRANSFER OF PERMIT NO. 882 TO MILLENNIUM MARITIME, INC., NOW KNOWN AS WESTOIL TUG SERVICES, INC., UNDER A NEW CORPORATE STRUCTURE; APPROVE TRANSFER OF A FIVE-YEAR OPTION TO EXTEND TERM OF PERMIT NO. 882 AND DEEM THE EXERCISE OF THE OPTION EFFECTIVE; AND APPROVE ORDER RESETTING COMPENSATION UNDER PERMIT NO. 882

SUMMARY:

Staff requests approval of three separate actions concerning Permit No. 882 (Permit) between Millennium Maritime, Inc., now known as Westoil Tug Services, Inc. (Millennium/Westoil) and the City of Los Angeles: 1) Transfer of the Permit to Millennium/Westoil under a new corporate structure resulting from the sale of stock and/or assets, merger and/or consolidation and/or reorganization by or of Millennium/Westoil; 2) transfer of the option to extend the term of the Permit from November 1, 2021 to October 31, 2026, and deeming Millennium/Westoil's exercise of that option effective; and 3) resetting compensation under the Permit for the period of November 1, 2021 to October 31, 2026.

There is a companion item also agendaized for the March 16, 2023, Board of Harbor Commissioners meeting that requests approval of the Second Amendment to Permit No. 882 with Millennium Maritime, Inc. which changes the name of the permittee from Millennium Maritime, Inc. to Westoil Tug Services, Inc. and changes the name of its parent company, Harley Marine Services, Inc. to Centerline Logistics Corporation in the guaranty of the Permit. If the proposed actions are approved, monthly rent would remain at \$58,227.91, or \$698,734.92 per year until the next Consumer Price Index (CPI) adjustment due July 1, 2023.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed actions are administratively and categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) and Article III Class 1(18) of the Los Angeles City CEQA Guidelines;

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2. Approve the Order authorizing the transfer of Permit No. 882 to Millennium Maritime, Inc., now known as Westoil Tug Services, Inc., under a new corporate structure;
3. Approve the Order authorizing the transfer of the option to extend the term of Permit No. 882 from November 1, 2021 to October 31, 2026, to Millennium Maritime, Inc., now known as Westoil Tug Services, Inc., under a new corporate structure and deem the exercise of that option effective;
4. Approve the Order resetting compensation under Permit No. 882 for the period of November 1, 2021 to October 31, 2026;
5. Authorize the Board Secretary to attest to the Order approving the transfer of Permit No. 882 to Millennium Maritime, Inc., now known as Westoil Tug Services, Inc. under a new corporate structure;
6. Authorize the Board Secretary to attest to the Order approving the transfer of the option to extend the term of Permit No. 882 from November 1, 2021, to October 31, 2026, to Millennium Maritime, Inc., now known as Westoil Tug Services, Inc., under a new corporate structure and deem the exercise of that option effective;
7. Authorize the Board Secretary to attest to the Order resetting compensation under Permit No. 882 for the period of November 1, 2021 to October 31, 2026; and
8. Adopt Resolution No. _____ and Order Nos. _____.

DISCUSSION:

Background - Under the Permit, Millennium/Westoil conducts tug and barge operations at Berth 301 on Terminal Island. The company provides critical refueling (bunkering) services in the San Pedro Bay, with the Permit premises serving as a local homebase for staging of tugs and barges, with modular office space. The premises are comprised of 111,416 square feet of wharf space and 43,786 square feet of water space (See Transmittal 1).

The initial term of the Permit was for five years commencing on November 1, 2011, and expiring October 31, 2016, subject to two consecutive five-year extension options which the tenant can exercise unilaterally. The last extension option covers the period of November 1, 2021, through October 31, 2026. The Permit will terminate thereafter and there are no further options to extend under the current Permit. The Harbor Department approved Millennium/Westoil's request to place the Permit on holdover effective November 1, 2021, pending the Board's approval of the transfer of the Permit, which is further detailed below.

Upon approval of the holdover request, effective November 1, 2021, monthly rent was increased by 50 percent. Monthly rent was again increased by a CPI adjustment of 7.7 percent effective July 1, 2022, to arrive at present monthly rent of \$58,227.91

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Current Action - There are three items for consideration under this action: 1) approval of the transfer of the Permit to Millennium/Westoil under a new corporate structure (Transmittal 2); 2) approval of the transfer of the option to extend the term of the Permit from November 1, 2021 to October 31, 2026, to the transferee (i.e. Millennium/Westoil under its new corporate structure) and deeming the exercise of that option effective, thereby reinstating the remaining term of the Permit currently on holdover (Transmittal 3); and 3) approval of the Order resetting compensation (Transmittal 4).

A companion item also agendized for the March 16, 2023, Board meeting requests approval of the Second Amendment to the Permit, which changes the name of the permittee from Millennium Maritime, Inc. to Westoil Tug Services, Inc. and changes the name of the guarantor for the Permit from Harley Marine Services, Inc. to Centerline Logistics Corporation, the parent company of Millennium/Westoil.

Transfer of the Permit – Effective November 1, 2011, Permit No. 882 was granted to Millennium Maritime, Inc.. In August 2020, staff became aware that Millennium changed its name to Westoil; its guarantor, Harley Marine, changed its name to Centerline. As of the effective date of the Permit, Millennium was a wholly-owned subsidiary of Harley Marine, the guarantor.

Staff later discovered that a June 2019 transaction that resulted in a change of control and ownership of Millennium preceded the name changes. The change in control and ownership constitutes a transfer per the terms of the Permit.

Section 14.1 of the Permit provides in relevant part:

“Unless processed and approved strictly in accordance with this Section 14, no transfer of this Agreement, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of Tenant (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant), or accomplished in any other manner . . . shall be valid or effective for any purpose.”

Section 14.2 of the Permit describes the necessary procedures for seeking the City's consent to a transfer within the meaning of Section 14.1. Millennium/Westoil did not comply with those procedures prior to the June 2019 transaction, but Section 14.2 provides that the City may allow Millennium/Westoil to seek approval of a transfer that has already become effective.

Under the June 2019 transaction, 100 percent of the stock of Harley Marine/Centerline, Millennium/Westoil's parent corporation, was acquired by Alimpik Tug and Barge Holdco 1, LLC (Alimpik), a newly formed entity. The ownership of Harley Marine/Centerline transferred from an entity known as HMS Holdings (which was 53 percent-owned by HMS Partners and 47 percent-owned by Macquarie Marine Services) to Alimpik in which HMS Partners had no ownership interest. Under the terms of the Permit, because Alimpik acquired 100 percent of the stock of Harley Marine and HMS Partners relinquished its 53 percent stake in HMS Holdings, a transfer occurred and requires consent of the Board. The June 2019 transaction constituted a transfer of the Permit because it involved the

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sale of stock or assets, merger or consolidation or reorganization by or of Millennium/Westoil, the tenant, as well as Harley Marine/Centerline, HMS Holdings, and HMS Partners, all entities that directly or indirectly controlled or owned 50 percent or more of Millennium/Westoil.

Unless and until the Board consents to the transfer of the Permit, Millennium/Westoil is and will remain in default of the Permit. Millennium/Westoil seeks to cure this default and requests that the Board consent to the change in control and ownership of Millennium/Westoil, so that it may continue to use and occupy the premises through their extension option, described below.

Notwithstanding the transfer, the operations of Millennium/Westoil did not change because of the 2019 transaction. Westoil continues to have possession and control of the Premises per the terms of the Permit, and in addition, all tugs and barges operating at the Premises are required to have a Non-Exclusive Berthing Agreement with the Harbor Department. Specifically, these include Leo Marine Services, Olympic Tug & Barge and Westoil Marine Services.

Evaluation of Transfer: In evaluating any transfer notice, the Harbor Department bases its consent to the transfer on specific factors germane to the transfer. As part of this evaluation, Harbor Department staff reviewed the calendar year 2018 audited financials of Harley Marine Services, Inc. (last year prior to the June 2019 transaction), as well as the calendar year 2020 audited financials of Centerline Logistics Corporation (first full year post-transaction). Staff noted that Centerline Logistics Corporation held more cash on hand, generated more operating income in 2020 relative to Harley Marine Services, Inc. in 2018, and appears to possess reasonable financial wherewithal to meet its obligations as a potential Transferee under the Permit.

See Transmittal 5 which identifies the factors, and staff's findings for each item. Following the evaluation of these factors, staff determined there is no need to withhold or condition the consent to the transfer.

Transfer of the Option to Extend - In August 2020, Millennium/Westoil delivered to the Harbor Department a written notice purporting to exercise the second (and last) extension option under the Permit to extend the term an additional five years, effective November 1, 2021. Pursuant to the terms of the Permit, the permittee has the unilateral right to extend the Permit subject to certain conditions which include, in part: 1) the permittee's right to exercise the option to extend is conditioned upon the permittee not being in default under the Permit at the time of exercising the option, and 2) the right to exercise the option to extend is personal to the permittee only and does not extend to a transferee of the Permit.

Because the change in control and ownership of Millennium/Westoil occurred in 2019 without prior Board approval, the permittee violated the terms of the Permit, which constituted a default of the Permit and voided the extension right.

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On November 1, 2021, the Harbor Department placed Millennium/Westoil's Permit on holdover status to allow Millennium/Westoil to avoid a disruption in tug and barge operations at the Port of Los Angeles. Accordingly, staff issued a notice of holdover to Millennium/Westoil and increased their rent to 150 percent of the prior month's rent, as allowed under the Permit.

In its April 2022 transfer notice, Millennium/Westoil requested that the Harbor Department honor the exercise of the option to extend and reinstate the remaining term of the second five-year option under the Permit. Since that time, staff and Millennium/Westoil have discussed the terms of such reinstatement and also the compensation for the extension period.

Reinstatement of the remaining term of the Permit would require the Board's consent to the transfer of the Permit resulting from the change in control and ownership of Millennium/Westoil described above. Section 14.2.2(d) of the Permit provides that the City's consent to a transfer "shall not transfer to the Transferee any option granted to the original Tenant by this Agreement unless such transfer is specifically consented to by City in writing." Consequently, the Board's approval is required for the transfer of the option to extend the term of the Permit from November 1, 2021, to October 31, 2026, to the transferee (i.e., Millennium/Westoil under its new corporate structure) and deeming the exercise of that option effective.

Except for the default of the Permit concerning the change in control and ownership of Millennium, staff confirmed that Millennium/Westoil is a tenant in good standing. Rent is paid to date, and there are no known permit infractions or violations with applicable law. Further, based on staff's review of Harley Marine/Centerline's financial statements for the last three calendar years, the company has demonstrated overall financial strength and viability.

Notwithstanding the default that occurred, staff recognizes that Millennium/Westoil provides a valuable and critical service to the San Pedro Bay. Its fleet of barges provides critical refueling (bunkering) services that are essential to supporting domestic trade. Currently, Millennium/Westoil provides nearly all bunkering services at the Port of Los Angeles. A disruption in bunkering service at the Port of Los Angeles could result in impacts to the supply chain. As such, staff recommends the Board approve the transfer of the Permit to Millennium/Westoil under its new corporate structure and the transfer of the option to extend.

The Board's approval of the transfer of Permit No. 882 to Millennium/Westoil under a new corporate structure (item 1 above) and approval of the transfer of the option to extend (item 3 above), would reinstate the remaining term of the Permit, which is currently on holdover status.

Rent Reset - Provided the Board approves the reinstatement of the Permit, compensation must be reset.

Currently, Millennium/Westoil is charged holdover rent which is commensurate to market rates for waterfront, deep-berth property.

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| | Oct 2021 | Nov 2021 (Holdover 150%) | July 2022 (+CPI) |
|-----------------|--------------|-----------------------------|---------------------|
| Monthly Rent | \$36,043.27 | \$54,064.91 | \$58,227.91 |
| Rent/Acre | \$121,394 | \$182,091 | \$196,111 |
| Blended Rate/SF | \$2.79/SF/YR | \$4.18/SF/YR | \$4.50/SF/YR |

Current market rates for port land range from \$4.50 to \$5.00 per square foot per year, as confirmed in recent valuation studies, making the holdover rate consistent with the market for comparable properties. It also reflects its location at a deep-water berth as well as its superior strength and condition compared to other tug operator's facilities in the Port of Los Angeles, which are all inferior.

As such, staff recommends compensation be reset effective November 1, 2021, to \$54,065 per month, subject to annual CPI increases pursuant to the terms of the permit. Taking into account the CPI increase due July 1, 2022, rent is \$58,228 per month. The final rental rate of \$58,228 per month represents a 7.7% increase over the holdover rent and places Westoil Tug Services' rent at fair market value, with CPI increases annually thereafter, until the Permit's termination on November 1, 2026.

ENVIRONMENTAL ASSESSMENT:

The proposed actions include three items: 1) approval of the transfer of the Permit to Millennium/Westoil under a new corporate structure; 2) approval of the transfer of the option to extend the term of the Permit from November 1, 2021, to October 31, 2026, to the transferee (i.e., Millennium/Westoil under its new corporate structure) with no change to existing operations; and 3) approval of the Order resetting compensation. As an activity involving administrative changes and issuance of a permit extension for an existing facility and operation, the Director of Environmental Management has determined that the proposed actions are administratively and categorically exempt from the requirements CEQA under Article II Section 2(f) and Article III Class 1(18) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed actions will entitle the tenant to continue operations under Permit No. 882 until October 31, 2026. Furthermore, approval of the order resetting compensation will set monthly rent at \$54,064.91 effective November 1, 2021, and \$58,227.91, effective July 1, 2022. Staff has determined that these rent levels are aligned with current market rates in accordance with the Port of Los Angeles Leasing Policy. Rent will continue to be adjusted annually by CPI effective July 1 through the expiration of Permit No 882 on October 31, 2026.

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CITY ATTORNEY:

The Orders approving transfer of Permit No. 882, transfer of the option to extend Permit No. 882, and resetting compensation have been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Site Map
2. Order Approving Transfer of Permit No. 882
3. Order Approving Transfer of Option to Extend Permit No. 882
4. Order Resetting Compensation under Permit No. 882
5. Factors Germane to City Consent

FIS Approval: MB
CA Approval: SO

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