



**THE PORT  
OF LOS ANGELES**  
Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: MAY 22, 2013**

**FROM: REAL ESTATE**

**SUBJECT: ORDER NO. \_\_\_\_\_ - RESETTING COMPENSATION UNDER PERMIT NO. 513 WITH THE UNITED STATES OF AMERICA THROUGH THE DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND, SOUTHWEST DIVISION, SAN DIEGO**

**SUMMARY:**

Permit No. 513 (Permit) is a 50-year permit, effective November 26, 1984 through November 25, 2034, which grants the United States of America, through the Department of the Navy (US Navy) approximately 102,840 square feet of surface and subsurface right of way for a petroleum pipeline on City of Los Angeles Harbor Department (Harbor Department) land and water primarily located on Terminal Island.

It is proposed that for the five-year period of November 26, 1999 through November 25, 2004, compensation be set at \$61,665 annually; for the five-year period November 26, 2004 through November 25, 2009, compensation be set at \$71,345 annually; and for the five-year period November 26, 2009 through November 25, 2014, compensation be set at \$86,003 annually.

**RECOMMENDATION:**

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

1. Approve the Order resetting compensation under Permit No. 513 for the following five-year periods: November 26, 1999 through November 25, 2004; November 26, 2004 through November 25, 2009; and November 26, 2009 through November 25, 2014;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the Order resetting compensation to be paid by the United States of America through the Department of the Navy, Naval Facilities Engineering Command, Southwest Division, San Diego pursuant to Section 4(c) of Permit No. 513; and
3. Adopt Order No. \_\_\_\_\_.

**SUBJECT: PROPOSED COMPENSATION RESET FOR UNITED STATES NAVY****DISCUSSION:**

Background/Context – The US Navy has not paid past due compensation, owing since 2004, for a pipeline it constructed and operates under the Permit. The Permit premises, as identified on Harbor Department Engineering's Drawing No. 1-2491-1 (Transmittal 1), consists of approximately 102,840 square feet of subsurface right-of-way for a petroleum pipeline. The entire pipeline extends from the Port of Long Beach through Harbor Department property (Terminal Island, the Main Channel, and San Pedro) to a Defense Energy Support Center on North Gaffey Street, San Pedro.

The Permit requires that annual compensation be reset and agreed upon by both parties every five years, following the first ten-year period of the Permit. Total consideration under the Permit for the first ten-year period of 1984 to 1994 was \$127,865, due in advance, which constituted the present value in 1984 of the agreed upon rate for the ten-year period. The parties negotiated and agreed upon a total compensation amount of \$272,805 for the five-year period of 1994 to 1999.

Subsequent attempts to set compensation have been unsuccessful due to the Permit requirement that the Board and US Navy must mutually agree upon the annual compensation and the US Navy's various staffing changes. As a result, the Harbor Department and the US Navy have been unable to reach an agreement regarding compensation resets under the Permit for the three, five-year time periods commencing in 1999, 2004, and 2009.

The Harbor Department invoiced the US Navy \$381,101 for the entire five-year period of 1999 to 2004. The US Navy paid the invoice in 2007, but has since contested the amount. There is no Board Order fixing compensation for the 1999 to 2004 time period because the parties did not reach an agreement. The US Navy was not invoiced during the period in question, and the US Navy has made no further payments.

Appraisal and Negotiations – In April 2012, pursuant to Section 4(c) of the Permit, the US Navy and the Harbor Department agreed to hire Lea Associates, Inc., an independent appraiser, to estimate the fair market rent for the three compensation periods in question. An appraisal report dated November 19, 2012 was prepared by Lea Associates, Inc., with copies provided to both the US Navy and the Harbor Department. The Harbor Department proposed to the US Navy that compensation for the three periods be set based on the values opined in the appraisal. In response, the US Navy concurred that the appraised value of \$61,665 annually (for the five-year period of 1999 to 2004) and the appraised value of \$71,345 annually (for the five-year period of 2004 to 2009) accurately reflects the fair market rental value of the premises for those periods. However, the US Navy will not agree to pay the proposed compensation for the 2004, 2005, and 2006 time periods, indicating that they believe payment is barred by the statute of limitation. Additionally, the US Navy disputes the appraised fair market rental value of \$86,003 annually for the five-year period of 2009 through 2014, and refuses to agree to set compensation at the appraised values for the years 2004 through 2014 (Transmittal 2).

**SUBJECT: PROPOSED COMPENSATION RESET FOR UNITED STATES NAVY**

The Harbor Department's Real Estate Division (RED) staff reviewed the appraisal from Lea and Associates, Inc., as well as the response provided by the US Navy, and concluded that the appraiser properly explains his conclusion and final estimated value for the valuation date of November 26, 2009. The final estimated annual market rental value of \$86,003 is consistent with the data presented and the evaluation analysis.

Conclusion – The US Navy has refused to enter into a signed agreement for any of the compensation periods in question. Section 4(c) of the Permit directs in part that, "if an agreement is not reached for the fair market consideration within 45 days after submittal of the appraisal report, the Board shall have the right to set the fair consideration value of the premises utilizing the evidence including the appraisal report, Board's adopted policy on rate of return, and any other related factors." Therefore, it is proposed that the Board set the compensation for the three, five-year periods as recommended above (Transmittal 3).

Upon Board approval to set compensation per the requirements of the Permit for the three, five-year periods, RED and the Office of the City Attorney will work with the US Navy to negotiate terms and a lump sum payment for the entire periods due which includes the 1999 to 2004 compensation period, the 2004 to 2009 compensation period, and the 2009 to 2014 compensation period. It is expected that the \$381,101 that the US Navy paid in 2007 for the 1999 to 2004 compensation period will be used as a credit toward any agreement reached with the US Navy.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an Order resetting compensation under Permit No. 513 with the US Navy for five-year periods from November of 1999 through November 2014. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2 (f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

This Board action will have no direct employment effect.

**FINANCIAL IMPACT:**

Approval of the proposed compensation resets would provide the Harbor Department with the authority to invoice the US Navy for the compensation amounts referenced herein and could result in a sum total rental compensation to the Harbor Department of \$713,964 (net of the \$381,101 the US Navy already paid for the 1999-2004 period through the 2009-2014 reset period, provided that the Harbor Department and US Navy can come to terms on payment).

SUBJECT: PROPOSED COMPENSATION RESET FOR UNITED STATES NAVY

**CITY ATTORNEY:**

The Order resetting compensation has been approved as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

1. Site Map
2. US Naval Response Letter
3. Order

FIS Approval:  (initials)  
CA Approval:  (initials)

  
JACK C. HEDGE  
Director of Real Estate

  
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APPROVED:

  
GERALDINE KNATZ, Ph.D.  
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