



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

DATE: FEBRUARY 28, 2017

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF JOINT REVOCABLE PERMIT NO. 15-07 AMONG THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND PORT OF LONG BEACH AS JOINT OWNERS, AND BNSF RAILWAY COMPANY

SUMMARY:

Staff requests approval of Joint Revocable Permit (JRP) No. 15-07 between BNSF Railway Company (BNSF), a Delaware corporation, and the City of Los Angeles Harbor Department (Harbor Department) and Port of Long Beach (POLB), as joint owners, to operate and maintain two subsurface four-inch diameter telecommunication conduits.

BNSF has installed the conduits along the Union Pacific Railroad Company right-of-way adjacent to their operations. The conduits were necessary in order to connect between two BNSF properties separated by the right-of-way. That right-of-way is now owned by the Harbor Department and POLB. BNSF had requested approval from Union Pacific Railroad to install these conduits and assumed they had the appropriate authority to proceed with the installation and in 2007, BNSF installed these conduits without seeking approval from the Harbor Department and POLB. After discovering the issue and a lengthy negotiation on the language of the JRP, an agreement with BNSF has been reached.

Approval of the proposed JRP will result in a one-time payment of \$19,369.79, equally shared by the Harbor Department and POLB for the period of February 1, 2007 through January 31, 2016. Going forward, rent will be based on \$2,000 per year plus an annual Consumer Price Index (CPI) escalator. BNSF will be responsible for all costs to operate and maintain the property.

RECOMMENDATION:

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

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Classes 1(14) and 3(5) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;

SUBJECT: PROPOSED JOINT REVOCABLE PERMIT NO. 15-07 WITH BNSF RAILWAY COMPANY, A DELAWARE CORPORATION

2. Approve Joint Revocable Permit No. 15-07 between the City of Los Angeles Harbor Department and Port of Long Beach as joint owners, and BNSF Railway Company to use the property to operate and maintain two subsurface four-inch telecommunication conduits;
3. Authorize the Executive Director to execute and the Board Secretary to attest to Joint Revocable Permit No.15-07; and
4. Adopt Resolution No. _____.

DISCUSSION:

Background – On December 22, 1994, the Harbor Department and POLB jointly purchased properties as part of the Alameda Corridor construction project. The property is located along the former Southern Pacific Railroad (SPRR) and Union Pacific Railroad (UPRR) right-of-ways (ROW) within the County of Los Angeles. The SPRR ROW was acquired to serve as the main rail line for the Alameda Corridor. The UPRR ROW was acquired to serve as a possible alternative route within the corridor. The railroad properties purchased are held by the Harbor Department and POLB as tenants in common, with each holding an undivided 50 percent interest in the property. Concurrently, with the acquisition of the railroad right away, the Harbor Department and POLB became successors-in-interest to all railroad agreements, leases, and licenses, related to the acquired railroad ROW.

JRP Terms and Conditions – The general terms and conditions of the proposed JRP (Transmittal 1) are as follows:

Use: The JRP allows use of the premises to operate and maintain two subsurface four-inch telecommunication conduits on jointly owned Harbor Department and POLB property.

Premises: The premises are comprised of 575 square feet of subsurface telecommunication conduits each containing three max cell interdicts, as depicted in Exhibit A of the JRP.

Compensation: BNSF will pay \$19,369.79 for the period February 1, 2007 through January 31, 2016, and thereafter an aggregate annual permit fee of \$2,000 per year plus annual CPI adjustments.

Term: The JRP will be effective upon execution by both the Harbor Department and POLB, and revocable upon 60 days' written notice by any party.

Insurance: The JRP requires that the Harbor Department and POLB be named as additional insured under BNSF's insurance coverage, including environmental pollution insurance. In addition, BSNF shall indemnify and hold harmless the Harbor Department and POLB.

SUBJECT: PROPOSED JOINT REVOCABLE PERMIT NO. 15-07 WITH BNSF RAILWAY COMPANY, A DELAWARE CORPORATION

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a JRP with BNSF and POLB for BNSF to operate and maintain two subsurface telecommunication conduits which have already been installed. As an activity involving issuance of a permit to use an existing facility involving negligible or no expansion of use which is related to a utility extensions of a reasonable length to serve already approved construction, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article III Classes 1(14) and 3(5) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The Harbor Department and POLB have established a \$2,000 annual permit fee for both telecommunication conduits described in the JRP.

Pursuant to Section 2.2 of the JRP, the Permit Fee shall be adjusted annually by the CPI for all Urban Consumers (base year 1982-84=100) for Los Angeles Riverside-Orange Counties. In no event shall the Permit Fee be less than the Permit Fee applicable during the immediately preceding Permit Year.

BNSF Telecommunication Conduit Permit

	2/1/2007 to 1/31/2016	2/1/2016-1/31/2017	Total Owed Joint Ports	Amount Owed to POLA (50% Interest)
Rent Owed Joint Ports	\$19,369.78 ¹	\$2,000.00		
CPI Adjustment*		\$ 256.59 ²	\$21,626.37	\$ 10,813.19

¹ Permit fee of \$19,369.78 includes cumulative CPI adjustment increase from February 1, 2007 through January 31, 2016.

² CPI - Consumer Price Index Los Angeles- Riverside-Orange County for January 2015 to 2016 of -0.1%. resulting in no change to prior year's CPI adjusted rent of \$2,256.59.

Approval of the proposed JRP will result in \$19,369.78 in revenue to the joint ports for the period of February 1, 2007 through January 31, 2016. Effective February 1, 2016, annual rent will be based on \$2,000.00 per year plus the annual CPI adjustment. This adjustment will add \$256.59, for a total of \$2,256.59, in Year 1.

DATE: FEBRUARY 28, 2017

PAGE 4 OF 4

SUBJECT: PROPOSED JOINT REVOCABLE PERMIT NO. 15-07 WITH BNSF RAILWAY COMPANY, A DELAWARE CORPORATION

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the proposed JRP as to form and legality.


TRANSMITTAL:

1. Joint Revocable Permit No.15-07

FIS Approval: *MB* (initials)

CA Approval: *ML* (initials)


for JACK C. HEDGE
Director of Cargo & Industrial Real Estate


MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

EDS:MD:JH:PA:EPP:raw
Author: E. Paragas
BL625raw BNSF JRP