



DATE: MAY 23, 2012

FROM: REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVE FOURTH AMENDMENT TO REVOCABLE PERMIT NO. 1464 WITH EXXONMOBIL OIL CORPORATION AND SUCCESSOR REVOCABLE PERMIT NO. 10-11 WITH GENERAL PETROLEUM CORPORATION FOR THE BERTH 259 MARINE FUELING FACILITY

SUMMARY:

Revocable Permit (RP) No. 1464 between the City of Los Angeles Harbor Department (Harbor Department) and Mobil Oil Corporation (currently known as ExxonMobil Oil Corporation - EMOC) grants use of property located at Berth 259 in Fish Harbor on Terminal Island for marine fueling station operations and maintenance of a pipeline right-of-way. EMOC and its predecessors have occupied the Berth 259 marine fueling station site since 1913, with General Petroleum Corporation (GP) operating the station since 1933. EMOC will cease operations of the marine fueling station and has requested an amendment to the RP so that only Parcel No. 2 of its leasehold premises is retained, as highlighted on Harbor Engineering Drawing No. 5-4472-1. GP is requesting a new RP, No. 10-11, to continue operation of the marine fueling station on Parcel Nos. 1, 3, and 4 and at an adjacent maintenance yard, as a successor to the current RP 95-46.

RECOMMENDATION:

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

1. Approve the Fourth Amendment to Revocable Permit No. 1464 with ExxonMobil Oil Corporation;
2. Approve successor Revocable Permit No 10-11 with General Petroleum Corporation;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Fourth Amendment to Revocable Permit No.1464 with ExxonMobil Oil Corporation and successor Revocable Permit No. 10-11 with General Petroleum Corporation; and
4. Adopt Resolution No. _____.

SUBJECT: FOURTH AMENDMENT TO REVOCABLE PERMIT NO. 1464 WITH EXXONMOBIL OIL CORPORATION AND REVOCABLE PERMIT NO. 10-11 WITH GENERAL PETROLEUM CORPORATION

DISCUSSION:

Background – Upon EMOC's request to delete the Berth 259 marine fueling station operations from RP No. 1464, GP also requested an RP from the Harbor Department to continue operation of the station. This marine fueling station is one of three such facilities located in the Port of Los Angeles.

In order to approve deletion of Parcel Nos. 1, 3, and 4 from RP No. 1464, the Harbor Department required EMOC to develop plans to restore and remediate the parcels. As part of that effort, it was determined that the premises were contaminated with hydrocarbons. Since GP has been the primary operator of the facility and wishes to continue operations of the marine fueling station, the remediation responsibility of EMOC under RP No. 1464 is being waived through the proposed Fourth Amendment (Transmittal 1) and GP is assuming full responsibility for remediation and site restoration through successor RP No. 10-11 (Transmittal 2).

GP has agreed to an initial remedial action for the premises and the adjacent Al Larson Boat Shop premises that will be compliant with the Los Angeles Regional Water Quality Control Board's (LARWQCB) approved Remediation Action Plan. Although the sufficiency of GP's plan for protecting the groundwater and harbor has yet to be approved by the LARWQCB, GP is working with LARWQCB staff and the Harbor Department to obtain approval, with such approval being anticipated. The proposed cleanup approach is expected to be effective at protecting site workers and the harbor waters. GP recognizes, and the proposed RP specifically states, that the interim remediation action is not a substitute for the restoration and remediation requirements which may be required at the end of the term and that additional remedial actions may be required to achieve the Harbor Department's goal of site restoration to levels that do not represent a liability to the Harbor Department or require restrictions on the future use of the site. The remediation action that will be undertaken by GP subsequent to the lease transfer has been exempted from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article 19, Class 30 of the State CEQA Guidelines as a minor cleanup action taken to minimize, stabilize, and mitigate the release or threat of release of hazardous waste or substances which is a small or medium removal action costing \$1,000,000 or less.

Additionally, EMOC is requesting that the Harbor Department waive its rights under RP No. 1464 to the tenant-owned buildings, structures, works and improvements on the premises. This request is made so that EMOC may sell those improvements to GP and thereby allow GP to conduct necessary demolition and remediation of the site and continue use of the remaining improvements. This waiver will not apply under successor RP No. 10-11 with GP.

Neither the Fourth Amendment to RP 1464 nor the new RP to GP would become effective unless both are approved and executed by the Harbor Department.

SUBJECT: FOURTH AMENDMENT TO REVOCABLE PERMIT NO. 1464 WITH EXXONMOBIL OIL CORPORATION AND REVOCABLE PERMIT NO. 10-11 WITH GENERAL PETROLEUM CORPORATION

Fourth Amendment to RP No. 1464 – It is recommended that RP No. 1464 be amended to (1) change the name of the tenant from Mobil Oil Corporation to ExxonMobil Oil Corporation, (2) waive the Harbor Department's rights to the improvements on the premises, and (3) remove the Berth 259 marine fueling station parcels (Parcel Nos. 1, 3, and 4 and the preferential right to use the wharf at Berth 240C) and all provisions related specifically to such deleted parcels, including remediation and restoration provisions. The resulting premises would consist of Parcel No. 2 (Transmittal 3), measuring 2,705 square feet (s.f.), for the three-foot-wide by approximately 900-foot long subsurface pipeline right-of-way running along and adjacent to Seaside Avenue.

Annual compensation of \$1,488, to be paid monthly (\$124 per month), for remaining Parcel No. 2 is based on current land value of \$22 per s.f., with a ten percent rate of return, and a 75 percent subsurface discount. EMOC is required to maintain an inert gas charge on the inactive pipeline and maintain a cathodic protection system to minimize corrosion. All other terms and conditions of RP No. 1464 remain the same.

RP No. 10-11 with GP for Marine Fueling Station – It is recommended that a successor RP, revocable by either party with 30 days written notice, be issued to GP for continued operation of the marine fueling station at Berth 259 (Transmittal 4). The proposed RP requires GP to take full responsibility for all site contamination of the fueling station property (currently Parcel Nos. 1, 3, and 4 of RP No. 1464), demolition of all improvements on the site upon termination of the RP, and remediation of all contamination on an adjacent portion of the Al Larson Boat Shop premises, as well as completing an initial interim remediation of the premises and the Al Larson Boat Shop premises. Upon approval of the RP, and to ensure the performance of the interim remediation, the RP requires that GP provide an irrevocable letter of credit, issued by a commercial bank or a surety by a trust company, with an initial amount not less than 125 percent of the cost of the interim remediation work, or \$2,547,312, whichever is greater. The letter of credit or surety will be reviewed annually and is subject to proportionate reduction when the Harbor Department determines that the value of the remedial action has diminished. The letter of credit for remediation and corporate guarantee are necessary, since EMOC's assets are substantially greater than GP's. Additionally, GP has submitted documentation to support that it has the financial means to cover all remediation, should the actual cleanup costs exceed the estimated costs.

The RP also requires a corporate guarantee from GP's parent company, Maxum Petroleum Operating Company (Maxum), a national marketer and logistics provider for petroleum products, for all obligations of the proposed RP with GP.

To avoid or minimize, to the extent practicable, re-contamination of the site, and upon completion of remediation activities, the RP requires GP, at its sole cost, to develop and implement a source control program and a storm water pollution and prevention plan and to comply with the Harbor Department's Water Resources Action Plan. The RP also includes the Harbor Department's updated standard environmental language which, among other things, establishes requirements for restoration and remediation of the premises upon termination of the RP.

SUBJECT: FOURTH AMENDMENT TO REVOCABLE PERMIT NO. 1464 WITH EXXONMOBIL OIL CORPORATION AND REVOCABLE PERMIT NO. 10-11 WITH GENERAL PETROLEUM CORPORATION

Compensation is based upon the greater of (1) minimum monthly rent, or (2) monthly percentage of gross receipts, plus fuel flowage rates per gallon or barrel, for various types of fuel sold (percentage rent). The proposed RP establishes a minimum monthly rent of \$12,345 (\$148,140 per year). Minimum annual rent is based on a total of 39,349 s.f. of waterfront area and 798 linear feet of wharf area with current land values of \$22 per s.f., with a ten percent rate of return, and the estimated average replacement cost for the timber wharf, less the depreciated value (75 percent) of the wharf, with a 12 percent rate of return. Minimum annual rent would be increased annually based upon the Consumer Price Index (CPI), but in no case shall be less than the previous year's minimum annual rent.

Additionally, GP occupies another property comprising approximately 13,840 s.f. at Berth 259 under RP No. 95-46, which was issued on January 23, 1996. Under RP No. 95-46, GP has use of the premises for the construction, operation, and maintenance of a facility for marine fuel tank cleaning and for purposes incidental thereto.

RP No. 95-46 will be superseded by RP No. 10-11 with GP, which will include the services yard and wharf area currently occupied by GP under RP No. 95-46.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a new RP with GP for the continued operation of the existing Berth 259 marine fueling station. The proposed action will remove the marine fueling station from EMOC's permit premises and transfer the operations of the fueling station and site restoration and remediation obligations to GP. As an activity involving the issuance of a permit to use an existing facility involving negligible or no expansion of use, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This proposed Board action will have no direct employment impact for the five-county region. However, the site restoration and remediation which will be performed by GP after a remediation plan is approved, with the estimated cost of \$1 million, would support approximately 20 direct and 17 secondary one-year equivalent jobs in the region.

FINANCIAL IMPACT:

The proposed Fourth Amendment to RP No. 1464 with EMOC decreases EMOC's annual fixed rental payment from \$72,684 to \$1,488 per year (due to the deletions of surface Parcel Nos. 1, 3, and 4 from EMOC's permit premises). However, the proposed successor RP with GP would result in compensation to the Harbor Department based on the greater of GP's minimum monthly rent of \$12,345 (\$148,140 per year) or

SUBJECT: FOURTH AMENDMENT TO REVOCABLE PERMIT NO. 1464 WITH EXXONMOBIL OIL CORPORATION AND REVOCABLE PERMIT NO. 10-11 WITH GENERAL PETROLEUM CORPORATION

percentage of gross receipts, thereby optimizing revenue to the Harbor Department from RP No. 10-11 with GP. Additionally, GP's minimum annual compensation includes an annual CPI adjustment. The proposed compensation for both EMOC and GP conforms to the Board's adopted rate of return policy.

CITY ATTORNEY:

The Fourth Amendment to RP No. 1464 with EMOC and successor RP No. 10-11 with GP have been approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

- 1. Fourth Amendment to RP No. 1464 with EMOC
- 2. RP No. 10-11 with GP
- 3. Harbor Engineering Drawing 5-4472-1
- 4. Site Map

JACK C. HEDGE
Director of Real Estate

FIS Approval: ef (initials)
CA Approval: tm (initials)

~~FOR~~
KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:

GERALDINE KNATZ, Ph.D.
Executive Director