



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

DATE: OCTOBER 13, 2016
FROM: ENGINEERING
SUBJECT: RESOLUTION NO. 16-8008 ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY AMENDED AND RESTATED USE
AND OPERATING AGREEMENT

SUMMARY:

Staff requests the Board of Harbor Commissioners (Board) adopt a Resolution and approve the Amended and Restated Alameda Corridor Use and Operating Agreement ("Amended and Restated UOA"), by and among the City of Los Angeles Harbor Department, the Port of Long Beach, Union Pacific Rail Road (UPRR), Burlington Northern Santa Fe (BNSF), and the Alameda Corridor Transportation Authority (ACTA), which among other things: 1) incorporates the amendments set forth in the First Amendment dated as of July 5, 2006; 2) replaces the Operating Committee with an alternative decision making process for the management of Alameda Corridor maintenance and operations; and 3) removes construction related provisions and updates certain other provisions to reflect current conditions and practices.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;
2. Approve the Amended and Restated Alameda Corridor Use and Operating Agreement (Amended and Restated UOA) by and among the City of Los Angeles Harbor Department, the Port of Long Beach, Union Pacific Rail Road (UPRR), Burlington Northern Santa Fe (BNSF), and the Alameda Corridor Transportation Authority (ACTA);
3. Direct the Board Secretary to transmit the Amended and Restated UOA to the City Council for approval pursuant to Charter Section 373 of the City Charter;
4. Authorize the Executive Director to execute and Board Secretary to attest to said Amended and Restated UOA; and
5. Adopt Resolution No. 16-8008.

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DISCUSSION:

Pursuant to the original Use and Operating Agreement dated October 12, 1998, decisions involving the maintenance and operation of the Alameda Corridor have historically been made by a four-member operating committee (the "Operating Committee") comprised of one representative from each Port and each Railroad. ACTA is not a member of the Operating Committee. The decisions made by the Operating Committee include, for example, establishing maintenance and operating standards and procedures; determining the annual maintenance and capital replacement or enhancement budget; periodically selecting a qualified maintenance contractor; and determining how trains are to be dispatched on the Alameda Corridor.

In 2014, the County of Los Angeles, in connection with its compliance duties under the State's Political Reform Act (Act), made inquiries with ACTA management regarding whether the Operating Committee's decision-making authority described above, along with its overall structure, made the committee a "local government agency" and thereby subject to the Act. In response, in August 2015, the Port of Long Beach (joined by the Port of Los Angeles and both Railroads) sought written advice from the State's Fair Political Practices Commission (FPPC) as to whether the Operating Committee falls under the purview of the Act.

In March 2016, the FPPC issued an advice letter (the "FPPC Advice Letter") concluding that the Operating Committee is a "local government agency" for purposes of the Act and therefore would be required to comply with the applicable provisions, including, for example, adopting a conflict-of-interest code and requiring its members to file certain disclosure statements.

From a practical standpoint, if the Operating Committee is acting in the capacity of a local government agency, and its members are public officials, both the Port and Railroad staff members would have to file certain financial disclosure statements with the state and refrain from making any decisions in which they have a financial interest. Due to the Railroad committee members' potential financial holdings and interest in their respective companies, such committee members would potentially be precluded from participating in many, if not all, decisions regarding Alameda Corridor maintenance and operations.

Representatives of each party have worked diligently with the County and one another during the last few months to address the issues raised in the FPPC Advice Letter while also providing an alternative decision-making structure that would allow for the continued efficient operation of the Alameda Corridor. The Amended and Restated UOA sets forth an alternative decision-making process which, among other things, replaces the Operating Committee with direct decision making authority by the Ports and Railroads. Dissolving the Operating Committee and modifying the decision making process is not expected to have any impact on the day-to-day operation of the Alameda Corridor or the collection of ACTA's revenues.

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In addition, the Amended and Restated UOA includes revised language to remove references related to construction and construction related activities of the Alameda corridor to reflect the current completed and operating conditions.

Attached as Transmittal 1 is the proposed Amended and Restated UOA. The Amended and Restated UOA is expected to be processed for approval during the next sixty days through the management of both Railroads and both Ports.

The former Operating Committee would typically meet twice a year to conduct business. During the past five years the Operating Committee met ten times and acted on approximately 50 items averaging 10 items per year. Most of the items requiring action related to budget approvals or additional expenditures that impacted the approved budget. Staff anticipates the Amended and Restated UOA will result in a similar number and type of recommended actions coming before the Board of Harbor Commissioners for resolution.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an Amended and Restated UOA. 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), under Article II, Section 2(f) of the City of Los Angeles CEQA Guidelines.

FINANCIAL IMPACT:

Approval of this proposed Board item is not expected to have a financial impact on the Harbor Department as the Amended and Restated UOA replaces the current Operating Committee framework, among other things discussed herein, and establishes in its place an alternative decision making process with direct decision making authority vested in the Ports and Railroads. The proposed changes are not expected to impact the day-to-day operations of the ACTA nor its revenue generating abilities to service its debt, of which the Ports are jointly responsible for in the event of a shortfall.

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CITY ATTORNEY:

The Office of the City Attorney has approved the Amended and Restated UOA as to form and legality.

TRANSMITTALS:

1. Amended and Restated UOA

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



DAVID M. WALSH, P.E.
Chief Harbor Engineer



ANTONIO V. GIOIELLO, P.E.
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

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