



Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: MARCH 8, 2022**

**FROM: CARGO & INDUSTRIAL REAL ESTATE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ – APPROVE ORDER RESETTING COMPENSATION UNDER PERMIT NO. 733 WITH FENIX MARINE SERVICES, LTD AND APPROVAL OF A TRANSFER OF CONTROL VIA THE ACQUISITION OF INDIRECT OWNERSHIP OF FENIX MARINE SERVICES, LTD TO CMA CGM**

**SUMMARY:**

Staff requests approval of two independent actions concerning Permit No. 733 between the City of Los Angeles Harbor Department (Harbor Department) and Fenix Marine Services, LTD (FMS): 1) the Order resetting compensation under the Permit and 2) the transfer of control of FMS to its parent, CMA CGM, through a stock purchase between Fin TopCo Partnership LP, a Delaware limited partnership, and CMA CGM, a French public limited company, whereby CMA CGM acquired 100 percent indirect ownership of FMS.

The Order will reset compensation associated with the portion of the premises that is not subject to the Minimum Annual Guarantee (Flat Rent on Non-MAG Area) for the five-year period beginning January 1, 2022 through December 31, 2026, with annual Consumer Price Index (CPI) adjustments commencing January 1, 2023. For the period of January 1, 2022 through December 31, 2022, the proposed Order would increase the flat rent on the non-MAG compensation by \$663,574, or 20 percent, from \$3,317,872 to \$3,981,446. All other components of compensation (i.e., MAG and rates) are reset mechanically pursuant to the terms of the Permit and are not required to be included in this proposed Order.

This action would also provide the necessary approval by the Board of Harbor Commissioners pursuant to the terms of the Permit concerning the transfer of control of FMS at the parent level, which occurred upon the consummation of the stock purchase between FIN TopCo Partnership LP and CMA CGM, resulting in CMA CGM indirectly owning 100 percent of the interests of FMS.

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**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 exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve the Order resetting compensation under Permit No. 733 with Fenix Marine Services, LTD for the five-year period of January 1, 2022 through December 31, 2026;
3. Authorize the Board Secretary to attest to the Order resetting compensation to be paid by Fenix Marine Services, LTD under Permit No. 733;
4. Approve the transfer of control resulting from the acquisition of 100 percent indirect ownership of FMS by its parent CMA CGM through a stock purchase pursuant to 12(a) of the Permit; and
5. Adopt Resolution No. \_\_\_\_\_ and Order No. \_\_\_\_\_.

**DISCUSSION:**

Background - Permit No. 733 was granted to FMS for premises consisting of 292 acres of land, of which 30.97 acres is non-MAG premises, at Pier 300 including Berths 302 to 305, for cargo handling operations for a term of 50 years expiring on September 9, 2043. As stipulated under the terms of the Permit, the adjustment of Flat Rent on Non-MAG Area concerning the 30.97 acres of non-MAG premises for the five-year period of January 1, 2022 through December 31, 2026 is required. All other components of compensation (i.e. MAG and TEU rates) are reset mechanically pursuant to the terms of the Permit, and are not required to be included in this proposed Order. Transmittal 1 depicts the Permit premises by compensation element.

Current Compensation and Proposed Reset of Compensation - Compensation for flat rent on the non-MAG area is reset in five-year intervals. Rent for the non-MAG area period of 2017 to 2021 totaled \$15,713,773, inclusive of annual CPI increases as detailed below. Flat rent on the non-MAG area comprises 5.4 percent of the total guaranteed revenue.

<b>Non-MAG Rent from 2017 through 2021</b>				
<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
\$3,000,000	\$3,066,000	\$3,132,839	\$3,197,062	\$3,317,872

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The reset of the Flat Rent on Non-MAG Area was due on January 1, 2022 for the period of January 1, 2022 through December 31, 2026. Staff concluded negotiations in December 2021, consistent with the deadlines set forth in the Permit. Under the terms of the Permit, should the parties implement the appraisal process to determine the Flat Rent on Non-MAG Area, any increase in rent may not exceed 120 percent of the Flat Rent on Non-MAG Area in effect on December 31, 2021. Due to the construct of the Permit's reset provision capping increases, the parties agreed that in lieu of implementing the appraisal process, Flat Rent on Non-MAG Area rent would be increased to the maximum allowable amount. FMS' and the Harbor Department's agreement to this increased amount set forth in the Order resolves the reset in a timely manner and avoids the parties implementing the potential lengthy and protracted appraisal process under the Permit that would likely result in the same outcome.

Under the terms of the proposed Order (Transmittal 2), FMS' flat rent on the non-MAG area will be increased by 20 percent, from \$3,317,872 per year to \$3,981,446 per year, commencing January 1, 2022, subject to annual CPI adjustments.

Approval of Transfer of Control of FMS Via the Acquisition of 100 Percent Indirect Ownership of FMS by its parent, CMA CGM – Section 12(a) of Permit 733 requires that any transfer of a grant of control of FMS will only be valid if approved in writing by the Board, which approval may not be unreasonably withheld. Further, Section 12(b) of this Permit requires FMS to provide written notice to the Executive Director of any transfer of stock totaling more than 10 percent within 10 days after the date of any transfer.

On November 23, 2021, FMS informed the Harbor Department of the planned acquisition by CMA CGM, a French public limited company, of an indirect 90 percent ownership interest in FMS via a stock purchase by CMA CGM (already a 10 percent shareholder) of 90 percent of the issued and outstanding shares of Fin TopCo (US), Inc., a Delaware corporation (which in turn indirectly owns 100 percent of FMS). This acquisition resulted in CMA CGM indirectly owning 100 percent of the equity interests of FMS. Because this transaction would result in trading of more than 10 percent of the outstanding capital stock of FMS, on January 7, 2022, FMS provided written notice of this stock transfer to the Executive Director pursuant to 12(b) of the Permit.

Upon receipt of this notice, staff requested additional documentation to determine whether this transfer constituted merely a stock transfer which only requires notice to the Executive Director pursuant to 12(b), which is FMS' assertion, or whether this transaction constituted a grant of control of FMS to its parent corporation CMA CGM, which would also require Board approval pursuant to Section 12(a). Following a review of this additional documentation, staff determined that, in addition to the written notice of the stock transfer provided by FMS to the Executive Director on January 7, 2022 pursuant to Section 12(b) of the Permit, and that even though FMS will remain as the tenant under the same terms and conditions of the Permit, FMS must also obtain approval by the Board pursuant to 12(a) of the Permit because this transaction resulted in a change of control of FMS upon the consummation of the stock transfer on January 4, 2022, resulting in CMA CGM indirectly owning 100 percent of the equity interests of FMS.

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With this stock transfer, the permit holder, FMS, remains unchanged and the guarantor, American Presidential Lines, LLC (APL LLC) (formerly known as American President Lines, Ltd.) for the permit also remains unchanged. While APL LLC is a CMA CGM company, it does not have any direct ownership of FMS, but remains the guarantor of FMS, as no other guarantor options have been agreed upon between the Harbor Department and FMS or its controlling parents. The guarantor of permit 733 has remained unchanged throughout all ownership changes that have occurred since June 2016 when CMA CGM initially acquired American President Lines, Ltd (now known as APL LLC).

Following a review of the documentation concerning the transfer of stock and change of control of FMS to CMA CGM, staff recommends the Board approve this transfer of control pursuant to 12(a) of the Permit since the entity that is the permittee under Permit No. 733, or FMS, remains the same as before and after the analyzed transactions (other than the change of the ownership of the parent CMA CGM's ownership interest from 10 to 100 percent). Further, based on staff's review of CMA CGM SA consolidated financial statements for the last three calendar years, the company has demonstrated overall financial strength and viability.

In summary, staff requests the Board (1) approve the reset Order as set forth in this current action; and (2) approve the transfer of control via the acquisition of 100 percent indirect ownership of FMS by its parent, CMA CGM, pursuant to 12(a) of the Permit.

**ENVIRONMENTAL ASSESSMENT:**

The proposed actions are the following: approval the Order resetting compensation under Permit No. 733, and approval of the transfer of control of FMS to CMA CGM through a stock purchase of Fin TopCo Partnership LP, which are administrative activities. Therefore, the Director of Environmental Management has determined that the proposed actions are administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

The proposed Order resets compensation paid by FMS under the Permit over the five-year period of January 1, 2022 through December 31, 2026. Effective January 1, 2022, the flat rent for non-MAG area will be increased by \$663,574, or 20 percent, from \$3,317,872 to \$3,981,446 per year, subject to annual CPI increases.

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**CITY ATTORNEY:**

The proposed Order resetting compensation has been reviewed and approved as to form and legality by the Office of the City Attorney. Further, the Office of the City Attorney has reviewed the proposed action concerning the grant of control and finds no legal issues at this time.

**TRANSMITTALS:**

1. Site Map
2. Order

FIS Approval: MB  
CA Approval: SO

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Director, Cargo & Industrial Real Estate

*Michael DiBernardo*  
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APPROVED:

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