



Executive Director's
Report to the

Board of Harbor Commissioners

DATE: MAY 11, 2012

FROM: REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - PROPOSED PERMIT WITH
PACIFIC BATTLESHIP CENTER, INC, FOR PREMISES AT BERTHS
87-89, FOR THE USS IOWA**

SUMMARY:

The proposed Permit between the City of Los Angeles Harbor Department (Harbor Department) and Pacific Battleship Center, Inc. (PBC) will allow for the berthing of the historic battleship, USS Iowa (Iowa), at Berths 87-89 along the San Pedro waterfront. The vessel will serve as a military museum, military educational center, visitor attraction and special event venue. The Iowa, viewed as a potential significant contributor to the numerous attractions and activities currently in development to bring more visitors to the emerging, world-class LA Waterfront at the Port of Los Angeles (Port), also has the added benefit of supporting the downtown business district of San Pedro.

The proposed Permit is for a term of ten years, with two renewable five-year options, for use of approximately 4.43 acres of Harbor Department property (Premises) for the berthing of the vessel and landside operations. Proposed compensation is based on PBC paying the higher of two forms of compensation for the use of the Premises: (1) a fixed minimum compensation, or (2) a percentage compensation based on monthly gross receipts collected. Pursuant to the terms of the proposed Permit, the Harbor Department retains the exclusive right to relocate the Iowa to another suitable location in the Port should annual paid attendance at the Iowa fall below 100,000 visitors. This relocation option will allow for optimal revenue generation and use of prime waterfront property along the LA Waterfront.

RECOMMENDATION:

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

1. Approve in substantial form the proposed Permit with the Pacific Battleship Center, Inc. and authorize the Executive Director to finalize;
2. Approve Courtesy of the Port privileges to Pacific Battleship Center, Inc. pursuant to Tariff No. 4, which includes, pilotage, dockage, and use of wharf premises at Berths 51-53 for temporary layberthing purposes until such time as the Iowa is towed to Berths 87-89;
3. Direct the Board Secretary to transmit the Permit to the City Council for approval pursuant to Charter Section 606;

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4. Authorize the Executive Director to execute and the Board Secretary to attest to the Permit upon Board approval contingent upon approval by the City Council; and
5. Adopt the foregoing as Resolution No. _____.

DISCUSSION:

Background – In 2010, PBC began the application process with the United States Department of the Navy (Navy) to obtain the Iowa for use as a public military museum under the Navy's Inactive Ships Donation Program. Included in the award process was the request by PBC to the Board to permanently berth the vessel in the Port, preferably at Berths 87-89 (Transmittal 2), as required under the Navy guidelines for site identification.

On November 18, 2010, the Board approved Resolution No. 10-7038 which provisionally supported the use of Berths 87-89 for the permanent berthing of the Iowa based on PBC meeting the following conditions: 1) the Iowa shall not interfere with cruise operations; 2) completion of an Environmental Impact Report (EIR) certified by the Board; 3) compliance with all permitting and regulatory agency requirements regarding public health, safety and environment; and 4) presentation to the Board of evidence of sufficient funding to meet all financial obligations associated with this project, including costs to bring the Iowa to the Port, start-up funding, and plans for long-term operations and maintenance through establishment of an escrow account.

Although siting the Iowa at Berths 87-89 will result in near-term impacts to berthing of cruise vessels, the Harbor Department has determined that temporary accommodations to the cruise industry can occur at Berths 45-47. Temporary facilities and off-site Homeland Security screening will be used at this location until such time as a new permanent cruise facility can be constructed at this site, according to the San Pedro Waterfront EIR. Long-term use of Berths 87-89 for the Iowa should have no impact on the development of the North Harbor Cut, a basin planned for berthing the S.S. Lane Victory and tug boats.

In September 2011, the Navy conditionally awarded the Iowa to PBC, pending full execution of the Donation Agreement and completion of other federal agency requirements and approvals. The Iowa was then transferred from Suisun Bay to the Port of Richmond, where it has been undergoing extensive exterior restoration work, including sandblasting, painting, and deck refurbishment and replacement. In February 2012, PBC was awarded a \$3 million unrestricted grant from the State of Iowa to provide funding for restoration and start-up costs. Under the proposed Permit (Transmittal 1), PBC is prohibited from conducting such exterior repair work at Berths 87-89. On April 30, 2012, the Donation Agreement was formally executed between the Navy and PBC, giving full ownership of the Iowa to PBC.

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LAYBERTHING AT BERTHS 51-53

The Iowa is tentatively expected to arrive in Southern California waters on May 24, 2012, where she will undergo hull cleaning six miles off the coast in deeper waters, a mitigation requirement of the EIR. Following the hull cleaning, the Iowa will be temporarily layberthed at Berths 51-53, until such time as the Permit is executed by the Executive Director, following City Council approval, and all vessel preparations are completed for the public opening at Berths 87-89. Courtesy of the Port privileges, pursuant to Tariff No. 4, are requested during this temporary period for all fees associated with pilotage, dockage and use of Berths 51-53 wharf premises, until arrival to Berths 87-89. The public opening of the vessel is tentatively expected to occur in July, following requisite approvals and permitting by the Los Angeles Fire Department.

PROPOSED PERMIT SUMMARY

Effective Date – The proposed Permit shall become effective following execution by the Harbor Department and PBC, and upon the last approval required by City's Charter and Administrative Code.

Term – Ten years with two, five-year options for renewal, predicated upon verification that PBC is a tenant in good-standing through demonstrated compliance of all Permit provisions during the first ten years of the Term and first option period; and achieving paid attendance of a minimum of 100,000 annually during the first ten years.

Premises – On the Effective Date, the proposed Permit shall entitle PBC to use and occupy Harbor Department property consisting of approximately 4.43 acres:

1. Preferential use of Parcel 1 – approximately 2.83 acres of water for berthing.
2. Preferential use of Parcel 2 – approximately 1.46 acres of wharf area for PBC visitor operations, including ticket booths and public restrooms.
3. Preferential use of Parcel 3 – approximately .14 acres of paved area for use by PBC, for the storage of operational equipment and supplies.
4. Future Parcel – approximately .50 acres located at the rear of Berth 87 for the construction, operation, and maintenance of the proposed PBC Museum and Visitor's Center (Building). The future Building pad shall be granted by the Harbor Department for inclusion in the proposed Permit after the first five years of the Term and upon the satisfactory completion of the following elements, as approved by the Board:
 - Evidence of sufficient funding and cash on-hand by PBC in the amount of \$5 million for construction and operation, separate and aside of funds allocated for Iowa operations or the escrow accounts described below;

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- The identification and availability of alternate public parking spaces that will be lost due to the Building construction by PBC;
- Harbor Department's relocation of the Ralph J. Scott, the historic fireboat vessel; and
- Construction shall commence by PBC within one year of the granting of the Future Parcel by the Harbor Department or the Future Parcel premises shall be returned, with no future obligation for development.

Relocation Option – Annual attendance estimates range from 188,000 to 400,000. Should annual paid attendance at the Iowa fall below 100,000 in any calendar year, the Harbor Department shall have the right, at its sole discretion, to relocate the Iowa to another suitable location in the Port to allow for optimal use and revenue generation of this prime waterfront property at Berths 87-89.

Uses – PBC shall be permitted to use the Premises for the berthing, operation, and long-term maintenance of the Iowa as a museum and educational facility for the public to learn and explore the history of Navy battleships, the Iowa, the Iowa class of battleships, and the Iowa service history and crew.

Allowable uses of the Premises include: tours, youth sleepover programs (single day or weekend programs only as approved in advance by the Harbor Department); special military and maritime educational programs and events; maritime/naval conferences; weddings and anniversaries and other special events approved in advance by the Executive Director, gift/souvenir sales, filming, snack/concession sales and other related uses required for the operation of a battleship museum, and maritime related educational purposes.

For safety and security measures, one full-time watchman is allowed to work on the Premises in appropriate shifts on a 24-hour basis. Residential use of the premises is not allowed, including temporary or brief overnight stays by guests, workers, and volunteers. Work shifts for all other PBC employees, volunteers and guests are limited to a maximum of one 12-hour shift, per day, to prevent such overnight use of the Premises.

The parking of any automobiles, buses, and recreational vehicles is prohibited on the Premises. PBC will be allowed to use the shared public parking lot utilized by the Cruise Terminal and Catalina Express in the same manner as other Harbor Department tenants, with no special provisions for specified spaces for PBC employees, volunteers, and/or visitors. In consideration of its non-profit status, PBC will be granted 25 annual parking vouchers for its exclusive use; review of such use will occur on an annual basis by the Harbor Department.

Compensation – PBC shall pay the higher of two forms of compensation for the use of the Premises, (1) a fixed minimum compensation, or (2) a percentage compensation based on monthly gross receipts collected:

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Period	Annual Minimum	Monthly Minimum	Percentage Gross Receipts
Years 1-2	\$50,000	\$4,167	2%
Year 3-5	\$100,000	\$8,334	4%

Years Six through Year Ten and Option Periods:

- Commencing at Year Six and throughout the Term, the compensation, consisting of the minimum annual guarantee and percentage of monthly gross receipts, shall be reset in five-year intervals, in accordance to current market conditions for similar operations. At no time shall the compensation rate be set to an amount lower than the previous compensation period.
- Year Seven, annual compensation, consisting of the minimum annual guarantee and the percentage of monthly gross receipts, shall be subject to annual adjustments, as per Consumer Price Index.

Establishment of Escrow Accounts for Special Funds - In addition to the regular monthly compensation paid to the Harbor Department for use of the Premises, additional funding of specified escrow accounts will be established through monthly payments by PBC into two separate escrow accounts, based upon a percentage of monthly gross receipts collected. The two escrow accounts are as follows:

Towing Fund: 0.25% Monthly Gross Receipts

- Pursuant to the general terms of Board Resolution 10-7038 adopted on November 18, 2010, evidence of sufficient and available funding in the amount of \$500,000 is required during the entire term of the Permit. Use of this fund is restricted to towing purposes only in the event of Permit termination for the towing of the IOWA to waters outside of the Port, as a requirement for the restoration of the premises under proposed permit terms.

Operation and Maintenance Fund: 0.75% Monthly Gross Receipts

- Due to the start-up nature of IOWA museum operations, the Board requested evidence of sufficient and available funding by PBC to ensure adequate funding in the amount of \$1.875 million, an amount equal to approximately three months of PBC's estimated first year's operational costs. Since PBC does not currently have this much cash on hand, the proposed Permit requires funding of this escrow account. The use of this fund is restricted to operation and maintenance purposes only, as approved in advance by the Harbor Department. Additionally, a contingent use of the Operation and Maintenance fund will be allowed by the Harbor Department should the IOWA require towing out of the Port and insufficient funds are available in the Towing Fund. Monies can be transferred out of this account for this specific purpose and use by PBC. Five-year periodic review of this fund will occur by the Harbor Department to determine long-term necessity.

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Interest income from the escrow accounts will accrue to PBC once both escrow accounts have been fully funded to the dollar requirements of each: \$500,000 for the Towing Fund and \$1.875 million for the Operation and Maintenance Fund.

PBC Reporting Requirements – To ensure Permit compliance, and to be consistent with the allowable uses that can be conducted on the Premises, on or before the 15th day of each calendar month, PBC shall submit a Finance and Activity Report to the Harbor Department, in an approved format and signed by PBC which shall include the following details:

1. A detailed gross income report by category, upon which percentage rent and funding of each escrow account is to be paid for the previous calendar month;
2. A detailed report of all attendees visiting the Iowa during this period, classified by type of visitor: volunteer, paid visitor, or guest visitor of PBC;
3. A detailed report of monthly expenses of all PBC activities conducted on the premises.

Additionally, at the end of each calendar year, PBC must submit an annual financial report prepared by a certified public accountant that includes a summary of annual income, disbursements, and financial obligations incurred during the year. Included in the annual financial report shall be written operating report that details all programming activities and operations conducted on premises during the calendar years including a detailed report of volunteer hours worked.

IMPROVEMENTS

Tenant Improvements

- PBC shall be responsible for all tenant improvements constructed on the Premises, including installation of pre-fabricated ticket booths, restrooms and a public access ramp/elevator system to the vessel. The Premises will be granted on an "as-is" condition, with PBC responsible for submission and approvals of all plans, permits and associated documents for the construction of all tenant improvements, including a General Permit from the Chief Harbor Engineer and permits from the Los Angeles Department of Building and Safety, Los Angeles Fire Department, etc., prior to commencement of any museum operations, public or private.

Harbor Department Improvements

- The Harbor Department shall provide the following in-place improvements: approximately 940 linear feet of wharf, located at Berths 87-89; wharf fendering system, including the use of five existing foam-filled floating fenders; and approximately 6,040 square feet of paved backland area specific for PBC operations. The Harbor Department shall not be responsible for electrical, water, gas, sewer, or any other utility lines serving the Iowa.

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Promotion of the Port of Los Angeles and Harbor Facilities – PBC shall in good faith, and with all reasonable diligence, utilize best efforts for suitable advertising and other means to promote the use of the Premises. PBC must utilize local hotels, facilities, and venues in the City of Los Angeles for any off-site and/or ancillary purposes and events required for the associated use of the Premises.

Environmental – PBC shall agree to the compliance with all applicable environmental provisions of the Harbor Department's Leasing Policy, City's Environmental Management Policy, and the Water Resources Action Plan (WRAP), California Environmental Quality Act (CEQA) requirements and the final mitigation measures consistent with the mitigation measures identified and adopted by the Board in the "USS Iowa Project Final EIR."

Maintenance – During the entire Term, the operation and maintenance of the Premises, including structures and improvements, shall be the full responsibility of PBC. Certain wharf structural repair items are excluded, consistent with the permits with all other Harbor Department tenants.

ENVIRONMENTAL ASSESSMENT:

The Harbor Department is the lead agency and has prepared an EIR in accordance with the requirements of the CEQA. The Board will consider certification of the Final Environmental Impact Report (FEIR) for the USS Iowa Project (Project) and Project approval. This action must take place prior to considering approval of the Permit.

In approving the Project, the Board will need to make specific Findings of Fact (FOF) regarding the significant environmental impacts of the Project and mitigation measures to reduce or avoid such impacts, adopt a Statement of Overriding Considerations (SOC) and adopt a Mitigation Monitoring and Reporting Program (MMRP) to track mitigation. The Project would result in significant impacts related to air quality; greenhouse gases (GHGs), traffic and circulation, and cumulative impacts. Even with implementation of mitigation measures, lease measures, and standard conditions of approval, temporary significant and unavoidable air quality impacts will remain during transport of the USS Iowa from San Francisco Bay to Berth 87. Adopted mitigation measures, lease measures, and standard conditions of approval will be incorporated into the Permit.

ECONOMIC BENEFITS:

Staff has determined that the Iowa would create the following regional impacts:

- Start-up costs would result in one-time local spending supporting the equivalent of 38 direct and 35 secondary jobs in the region;
- Annual local spending on non-payroll operating and support costs would support the equivalent of 50 direct and 64 secondary regional jobs; and
- Visitor spending could support an additional 60 to 120 local jobs, depending on the number of visitors and the amount of local spending.

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FINANCIAL IMPACT:

An internal rate of return analysis has been conducted by Financial Management on the Harbor Department improvement costs and estimated revenue over the term of the proposed Permit, indicating a range of 3.86-6.62 percent rate of return. This estimated rate of return does not include the use of the improved parking premises at the rear of Berths 87-89, as this area is not part of the Premises.

CITY ATTORNEY:

The proposed Permit is subject to approval as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

- 1. Proposed Permit
- 2. Aerial photo of site plan

FIS Approval: KP (initials)
 CA Approval: TM (initials)

FOR 
 JACK C. HEDGE
 Director of Real Estate

FOR 
 KATHRYN McDERMOTT
 Deputy Executive Director

APPROVED:

 GERALDINE KNATZ, Ph.D.
 Executive Director