



**THE PORT  
OF LOS ANGELES**

Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: NOVEMBER 7, 2023**

**FROM: CARGO & INDUSTRIAL REAL ESTATE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - CONSENT TO TRANSFER OF PERMIT NO. 953 FROM EVERGLADES COMPANY TERMINAL, INC TO LA TIL TERMINAL LLC AND APPROVE THE SECOND AMENDMENT TO PERMIT NO. 953 WITH LA TIL TERMINAL LLC**

**SUMMARY:**

Staff requests approval of the following actions concerning Permit No. 953 (Permit 953) between Everglades Company Terminal, Inc. (Everglades) and the City of Los Angeles Harbor Department (Harbor Department):

- Consent to the transfer of Permit 953 from Everglades to LA TiL Terminal LLC and related assignment instrument due to a planned internal corporate restructuring; and,
- Approve the proposed Second Amendment, which would allow revenues associated with containers loaded and/or discharged from vessels controlled by Mediterranean Shipping Line (MSC) at the adjacent China Shipping terminal to apply toward the Minimum Annual Guarantee (MAG) for the Everglades permit during calendar year (CY) 2022.

**RECOMMENDATION:**

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

1. Find that the Director of Environmental Management has determined that the proposed action is 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. Consent to the transfer of the Permit No. 953 from Everglades Company Terminal, Inc. to LA TiL Terminal LLC;
3. Consent to the Assignment and Assumption agreement between Everglades Company Terminal, Inc. and LA TiL Terminal LLC;
4. Approve the Second Amendment to Permit No. 953 with LA TiL Terminal LLC;
5. Authorize the Executive Director to execute and the Board Secretary to attest to the Second Amendment; and
6. Adopt Resolution No. \_\_\_\_\_.

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**DISCUSSION:**

As approved by the Board on September 2, 2021, Permit 953 enables Everglades to operate a marine container terminal at Berths 121 to 127 (Transmittal1). The First Amendment to Permit 953 extended the original term of the Permit by two years, from three years originally to five years as amended with an expiration date of October 10, 2026.

1. Request for Consent to Assignment

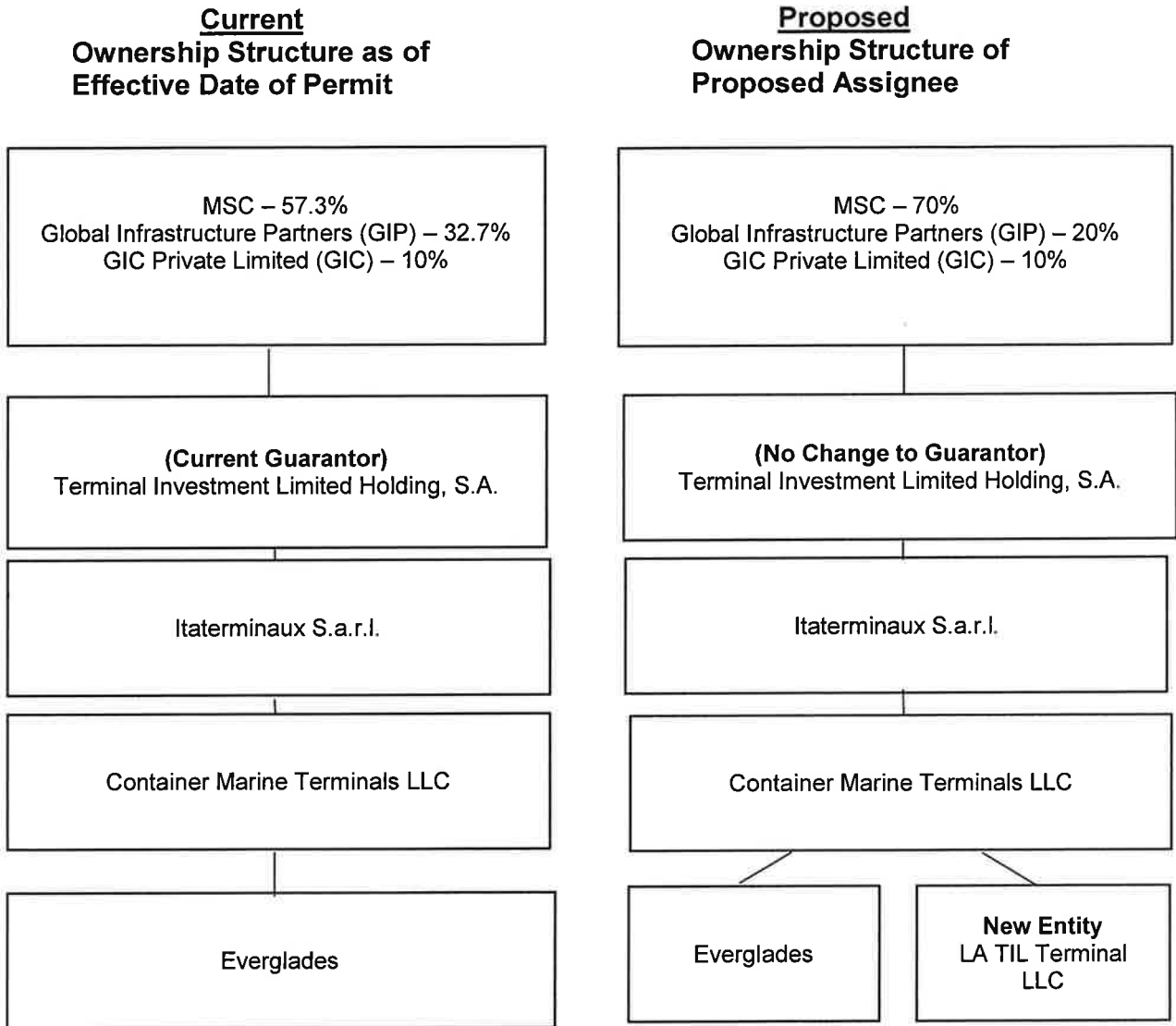
Everglades informed the Harbor Department that in connection with an internal reorganization of its corporate group, they proposed to assign the Permit to an affiliated entity, LA TiL Terminal LLC (Assignee). This action constitutes a transfer under the terms of Permit 953, necessitating Board consent.

Everglades complied with the transfer provision in the Permit and provided all requisite information. The Assignee is a limited liability company formed in the State of Delaware on February 13, 2023. The Assignor is Everglades' direct parent, Container Marine Terminals, LLC, which owns 100 percent of the equity interests in both Everglades Company Terminal, Inc. and LA TiL Terminal, LLC. Terminal Investment Limited Holding S.A. will continue to serve as the Guarantor under Permit 953.

Since this transfer is an intercompany transfer between 2 subsidiaries of the Guarantor, all existing contracts related to the operation under the Permit will be assigned by Everglades and assumed by the Assignee under an Assignment and Assumption Agreement between Everglades and LA TiL Terminal LLC.

Organization Charts: Provided below are organization charts depicting the ownership of the current permittee and proposed assignee. As illustrated below, MSC owns the majority interest in the tenant, and this assignment arises from an internal corporate restructuring.

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Staff Analysis of Transaction: The Harbor Department’s Financial Planning and Analysis Division reviewed the financial statements of the Guarantor (Terminal Investment Limited Holding S.A.) and noted that key liquidity, profitability and leverage metrics have all improved in calendar year 2022 relative to calendar year 2021. Under the proposed transfer, Terminal Investment Limited Holding S.A. will remain the Guarantor, but the guaranty instrument (Transmittal 2) was updated to reflect LA TIL Terminal LLC as the Tenant.

The Assignment and Assumption Agreement between Everglades and LA TiL Terminal LLC (Transmittal 3) will be executed following the Board’s consent to the transfer. The Harbor Department is not a party to the Assignment and Assumption Agreement.

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Transfer Fee: Permit 953 contains a provision requiring the tenant to pay the Harbor Department a transfer fee an amount equal to ten percent of the gross transaction value attributed to the permit. However, this fee does not apply in this instance given the inter-company nature of the transfer.

2. Proposed Second Amendment

Everglades requested a Second Amendment to Permit No. 953 to allow revenues associated with containers loaded and/or discharged from vessels controlled by MSC (i.e. Everglades' parent company) at the adjacent China Shipping terminal to apply toward the MAG for Everglades' Permit. See Transmittal 1 for a depiction of the two terminals.

Facility Limitations: Due to the limited berth draft and crane sizes available at the Everglades terminal (≤~5,000 Twenty-foot Equivalent Unit (TEU) capacity vessels), larger container vessels are more effectively and efficiently handled at the China Shipping terminal. During CY 2022, 41 MSC-controlled vessels were handled at the adjacent China Shipping terminal, with average capacity of 9,000 TEUs per vessel, for a total of 349,368 TEUs.

Financial Considerations: The following table summarizes CY 2022 compensation due and MAG obligations for China Shipping and Everglades:

	China Shipping <sup>1</sup>	Everglades
Compensation Due	\$49,830,810	\$18,798,093
Less: MAG	(\$21,676,345)	(\$25,714,253)
Equals: Excess/(Deficient) MAG	\$28,154,465	(\$6,916,160)

<sup>1</sup>Note: China Shipping MAG and TEU rates are subject to change pending the execution of a 5-year compensation reset due June 2020.

While the Harbor Department received the applicable TEU charges for the containers carried on these vessels, China Shipping paid such charges under its permit. The result of having sent vessels to the China Shipping terminal caused Everglades to not meet its 2022 MAG (-\$6.9M). Had this MSC volume been handled at China Shipping under a secondary berthing arrangement with Everglades, then approximately \$10.4 million in additional TEU charges would have been processed under Everglades' Permit 953, and the \$6.9 million CY 2022 MAG deficiency at Everglades would have been fully mitigated. Furthermore, China Shipping would have continued to meet its MAG obligations even after the 349,368 MSC TEUs are excluded.

Mechanics of Amendment: Permit 953 provides that "if Tenant has not generated sufficient TEU charges to pay City the MAG by the end of each compensation period (MAG Deficiency), tenant shall within thirty (30) days of the end of each compensation period pay such additional sums as are necessary to assure that City has been paid the MAG."

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This requested Amendment would solely address administration of Permit 953's compensation provision and implement a new method of counting containers for the purpose of assessing Everglades' compliance with its CY 2022 MAG obligation. It does not address or impact operational aspects of either the Everglades or China Shipping premises and would not change the volume of containers handled through either container terminal facility.

The proposed Second Amendment would allow TEU revenues generated from containers loaded to and/or discharged by MSC-controlled vessels calling at the adjacent China Shipping terminal to count toward Everglades' MAG for CY 2022 only. It would also increase Everglades' TEU rates by approximately 10 percent to match China Shipping's TEU rates effective January 1, 2023.

Approval of the requested Amendment to Permit 953, as an accounting matter, will allow, as described in detail above, TEU charges paid in connection with MSC-controlled vessels handled at the China Shipping terminal for CY 2022 to be counted against Everglades' CY 2022 MAG, with the condition that the Everglades' MAG deficiency is capped at the China Shipping terminal's MAG overage. For 2023 to 2026, Everglades/LA TiL Terminal would need to coordinate its use of China Shipping's terminal under a secondary berthing arrangement such that MSC-volume only counts toward the Everglades/LA TiL Terminal's MAG, rather than to China Shipping's MAG as it did in 2022. Everglades has leveraged this arrangement 45 times this year (through November 6, 2023).

Amendment Scope: The scope of the Second Amendment (Transmittal 4) is as follows:

Compensation Provision	Description
MAG	Compensation section of Permit No. 953 would be revised for the period of 2022 only. Everglades would receive a MAG credit of \$6.9 million to account for MSC-controlled cargo handled at China Shipping.
TEU rates	The TEU efficiency bracket rate schedule would be increased effective January 2023 by ~10%.
Semi-Annual Review of Efficiency Bracket	The efficiency bracket applicable to Tenant's TEU volume shall be subject to review every six months during the term of this Permit to ensure the applicable rate is consistent with the throughput per acre.

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**ENVIRONMENTAL ASSESSMENT:**

The proposed actions are the approval of a Second Amendment to Permit 953 and consent to the assignment of Permit 953 from Everglades to LA TiL Terminal LLC, which are administrative activities. Therefore, the Director of Environmental Management has determined that the proposed action is 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 Second Amendment will (a) enable Everglades MSC TEUs handled at China Shipping during CY 2022 to offset a \$6.9 million MAG deficiency and (b) consent to the transfer of Permit 953 from Everglades Company Terminal, Inc. to LA TiL Terminal LLC.

During CY 2022, 349,368 TEUs controlled by MSC were handled at China Shipping. Had these TEUs been handled at China Shipping under a secondary berth assignment to Everglades, then approximately \$10.4 million in additional TEU charges would have been processed under Everglades' Permit 953, and the \$6.9 million CY 2022 MAG deficiency at Everglades would have been fully mitigated. Furthermore, China Shipping would have continued to meet its MAG obligations after the 349,368 MSC TEUs are excluded.

In exchange for enabling Everglades to utilize MSC TEUs handled at China Shipping to offset the Everglades CY 2022 MAG deficiency, Everglades' TEU rates as of January 1, 2023 will increase by approximately 10.2 percent. Staff anticipates that through October 10, 2026, this 10.2 percent rate increase will result in more than \$6.9 million in incremental TEU charges to be processed under Permit 953.

With respect to the proposed assignment of Permit 953 to LA TiL Terminal LLC, staff has noted that both the existing permittee (Everglades Company Terminal, Inc.) as well as the proposed permittee (LA TiL Terminal LLC) are both 100 percent owned by the Permit 953 Guarantor, Terminal Investment Limited Holding S.A. If the proposed assignment is approved, Terminal Investment Limited Holding S.A. will continue to be the Guarantor under Permit 953. Furthermore, staff has evaluated the financial condition of Terminal Investment Limited Holding S.A., and has noted that key liquidity, profitability and leverage metrics have all improved in calendar year 2022 relative to calendar year 2021.

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**CITY ATTORNEY:**

The proposed Second Amendment to Permit 953 and Guaranty have been reviewed and approved as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

1. Site Map
2. Til Permit 953 Guaranty
3. Assignment and Assumption Agreement
4. Proposed Second Amendment

FIS Approval: *MB*  
CA Approval: *SO*

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