



Executive Director's
Report to the

Board of Harbor Commissioners

DATE: JUNE 29, 2011

FROM: REAL ESTATE DIVISION

SUBJECT: ORDER NO. _____ - PROPOSED AGREEMENTS WITH ULTRAMAR, INC., AIR PRODUCTS AND CHEMICAL, INC, AND THE CITY OF LONG BEACH CONCERNING RELOCATION OF LAND RIGHTS AND INFRASTRUCTURE INTERFERING WITH FUTURE DEVELOPMENT AT BERTH 200

SUMMARY:

The City of Long Beach (COLB), Ultramar Inc. (Ultramar) and Air Products and Chemicals, Inc. (Air Products) currently hold certain permanent easements in the vicinity of Berth 200 to support oil production and refinery operations. These easements conflict with Pacific Maritime Association – International Longshore and Warehouse Union (PMA-ILWU) hiring hall and the Pier A rail yard relocation (Berth 200 Project), as shown on Transmittal No. 3. Three separate agreements are proposed to resolve the conflicts through an exchange of property interests and the relocation of certain pipelines and utilities. Because the exchange involves the grant of a permanent interest in tidelands, the State of California (State), acting through the State Lands Commission (CSLC), is a party to each of the agreements.

Under the proposed Agreements the COLB, Ultramar and Air Products will release their respective interests in the existing easements that conflict with the Berth 200 Project and in exchange, new easements will be permanently granted to each of the parties.

The COLB will relocate, at Harbor Department expense, the conflicting pipelines and utilities associated with its oil producing operations at Berth 200. The COLB agreement calls for the Harbor Department to provide advance funding for these relocations which are estimated to cost \$5.8 million. Due to the potential that abandoned wells may require additional work, the allocation includes \$1.5 million, which would bring the total to \$7.3 million for the COLB. The Harbor Department will relocate the six Ultramar and one Air Products pipelines that serve local refineries at an estimated cost of \$6 million.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Agreements with the City of Long Beach, Ultramar Inc., and Air Products and Chemicals, Inc.;
2. Direct the Board Secretary to certify to the adoption of this Order and to transmit same to the City Council for approval and passage of the Ordinance attached as Transmittal No. 2 as provided in section 7.27 of the Administrative Code;

SUBJECT: AGREEMENTS FOR RELOCATION OF LAND RIGHTS AND INFRASTRUCTURE - FUTURE DEVELOPMENT AT BERTH 200

3. Authorize and direct the Executive Director to execute the Agreements and their associated deeds and acceptances and the Secretary of the Board to attest to same on behalf of the City of Los Angeles upon this Order being approved by the City Council and the Ordinance becoming effective;
4. Direct the Board Secretary to transmit the executed Agreements and their associated deeds and acceptances to the California State Lands Commission for execution; and
5. Adopt Order No. _____, attached as Transmittal No. 1.

DISCUSSION:

Background and Need – The Pier A Rail Yard is the existing railroad switching and classification yard adjacent to the TraPac terminal. Its relocation to Berth 200 is a vital element of the Berths 136-147 (TraPac) Container Terminal expansion project, as it will make room for the development of an on-dock rail facility at the TraPac terminal. The addition of an on-dock rail facility at TraPac will eliminate a significant number of truck trips and also make the terminal more efficient and competitive.

The proposed Pacific Maritime Association-International Longshore and Warehouse Union (PMA-ILWU) hiring hall will also be located in the vicinity of Berth 200.

While the Harbor Department holds title to the land at Berth 200; the COLB owns the mineral rights along with the certain permanent surface and subsurface easements to support its oil and gas operation. These rights and interests were acquired by COLB from Union Pacific in 1994.

Further, Ultramar and Air Products hold surface and subsurface easements for a pipeline corridor at Berth 200. These rights were originally acquired by Ultramar from Union Pacific in 1988 and then partially assigned to Air Products in 2008.

Currently, Ultramar and Air Products' pipeline corridor includes seven pipelines. Six are owned by Ultramar and one is owned by Air Products. Three of Ultramar's six pipelines connect to its refinery to the Valero marine oil terminal located at Berth 164. The remaining three Ultramar pipelines connect to nearby refineries. Air Products' pipeline also serves the local refineries.

The location of the COLB, Ultramar and Air Products' easements conflict with the Berth 200 project. Also, a portion of COLB's easement conflicts with the proposed PMA-ILWU Hall; therefore, COLB, Ultramar and Air Products' easements and the existing pipeline and utility lines that occupy them must be relocated at the Harbor Department's expense as contemplated in the Agreements. Below is a summary of the Agreements, which includes both title conveyance obligations and construction obligations.

SUBJECT: AGREEMENTS FOR RELOCATION OF LAND RIGHTS AND INFRASTRUCTURE - FUTURE DEVELOPMENT AT BERTH 200**I. City of Long Beach Agreement**

A. Conveyance Obligations – Relocation of COLB's surface and subsurface easements will be accomplished by the exchange of its existing interests for alternate easements in the vicinity of Berth 200. The new easements, like the existing easements, will be permanent. The Tidelands Trust Grant, however, limits the Harbor Department's ability to grant franchises or permits to 50 years. Therefore, the new property interests must first be removed from the public trust by quitclaiming them back to the State. The State will then grant the easements to COLB. Similarly, COLB will quitclaim its existing interests to the State, which will then transfer them to the Harbor Department to hold in trust. Significant conveyance terms of the COLB agreement are provided below.

1. Future Drilling Areas – The COLB currently holds surface rights in several areas at Berth 200 which are reserved for future drilling. These areas are identified on Transmittal No. 4, and total approximately 548,000 square feet. These areas will be exchanged for the new areas shown on Transmittal No. 5 as A, B, and C, which total approximately 326,274 square feet. Due to advancements in drilling technology, COLB does not require a 1-to-1 replacement of the future drilling areas.
2. Surface Right for Present Facilities – COLB holds surface rights associated with approximately 30 abandoned oil wells and eight active wells at Berth 200, as identified on Transmittal No. 6. COLB will quitclaim its general right of access to the surface of the land at Berth 200 in exchange for surface rights to just the eight active wells, as shown on Transmittal No. 5. The Harbor Department will retain the right, with COLB's prior approval, to pass over and use these surface areas when not in use by COLB. The eight active wells are located outside and to the south of the Berth 200 Project footprint.
3. Pipeline and Utility Line Rights – COLB currently has the general right to construct, maintain, use, and replace pipelines and utility lines as needed to support its oil and gas producing operation. COLB will quitclaim this right in exchange for the Harbor Department: 1) accepting COLB's existing idled pipelines and utility lines in "as-is" condition; 2) granting to COLB the right to construct, use, maintain, and replace pipelines and utility lines in a specific corridor, as shown on Transmittal No. 7, and 3) reimbursement, in advance, for the cost of constructing replacement pipelines and utilities.

B. Construction Obligations – COLB will perform the relocation of existing pipelines and overhead utility lines at the Harbor Department's expense. The cost is estimated to be \$5.8 million. This estimate contemplates undergrounding of all pipelines.

SUBJECT: AGREEMENTS FOR RELOCATION OF LAND RIGHTS AND INFRASTRUCTURE - FUTURE DEVELOPMENT AT BERTH 200

COLB requires advance funding of the relocation costs. The agreement provides that the Harbor Department will advance funds to COLB on demand.

1. Abandoned Oil Wells – COLB will retain title to and responsibility for abandoned oil wells. Further, if required due to their proximity to buildings, COLB will test and re-abandon existing oil wells located within the Berth 200 Project footprint at the Harbor Department's expense. The total cost for well work, if required, is estimated to be \$177,000 per well, for a total of \$1.5 million.

In the unlikely event that COLB determines that access is required to any abandoned wells at Berth 200 in the future to address regulatory or environmental concerns the Harbor Department will be required to provide access only, at its sole cost and expense. Such access will include the Harbor Department's temporary removal of then-existing improvements, such as rail tracks, so that COLB may reach its wells. COLB will be responsible, at its sole cost and expense, for all work necessary to address any regulatory or environmental concerns with the wells themselves.

The term for the construction element of the Agreement is expected not to exceed 12 months and will occur during Fiscal Year 2011/2012. This is an order of magnitude cost estimate since no detailed engineering work has been done to date.

COLB Approval – On May 17, 2011, the COLB City Council authorized the COLB City Manager to proceed with this transaction.

II. Ultramar and Air Products' Agreement

The separate agreements with Ultramar and Air Products are generally the same since both parties' pipelines are located within the same corridor.

Below is the scope of the agreements with Ultramar and Air Products, which is comprised of two major elements: A.) conveyance obligations; and B.) construction obligations.

Conveyance Obligations – Relocation of Ultramar and Air Products' easements will be accomplished by the exchange of the parties' existing interests for alternate easements in the vicinity of Berth 200, as shown on Transmittal No. 8. Similar to the agreement with COLB, the exchange of interests with Ultramar and Air Product's will pass through the CSLC.

Access – Due to the required alignment of the pipelines, a portion of the new corridor will cross a portion of the Berth 200 Project site. Therefore, in the event Ultramar requires access to its pipelines in the future (i.e. in an emergency situation) the Harbor

SUBJECT: AGREEMENTS FOR RELOCATION OF LAND RIGHTS AND INFRASTRUCTURE - FUTURE DEVELOPMENT AT BERTH 200

Department will be responsible for providing access by removing improvements, such as rail tracks, that interfere with Ultramar and Air Products' ingress and egress to such pipes. Ultramar will not be liable for any lost profits or business interruption caused by such removals provided Ultramar is reasonable in exercising its access rights.

Construction Obligations – Under the Agreement, the Harbor Department will perform pipeline relocation work at its sole cost and expense, estimated at \$6 million.

III. Valuation of Real Estate Transaction – As discussed below, one of the requirements of the legislation authorizing the exchange of property interests is that the interests acquired are of greater or equal value than the interests given. This requirement is satisfied by virtue of the fact that COLB's new interests constitute a much smaller area than its current interests.

Provided below is a comparison, based on land values of \$29 per square foot. As noted above, Ultramar and Air Products are located within the same pipeline corridor.

	Land to be granted to Harbor Department (SF)	Land Value (\$Million)	Land to be granted by Harbor Department (SF)	Land Value (\$Million)
COLB (Drill Areas)	547,903	\$15.89	326,274	\$9.46
Ultramar/Air Products (Pipeline Corridor)	166,662	\$4.83	164,685	\$4.77

The Harbor Department last commissioned an official benchmark appraisal of waterfront land value in 2006 which resulted in the benchmark of \$29 per square foot. Although dated, the 2006 benchmark appraisal is believed to be representative of the current south bay industrial market based on comparable sales over the past year.

IV. Legal Authority for Relocation – The property in the vicinity of Berth 200 was the subject of a quiet title action filed by the City of Los Angeles in 1969. In 1980, the action was resolved in a settlement between Union Pacific Land Resources Corporation, Champlin Petroleum Company, the City of Los Angeles and the State, which settlement is also referred to as the "Condock I Settlement." Pursuant to the settlement, the details of which are more fully described in the Recitals of the proposed Agreement, the City of Los Angeles acquired title to the surface estate in approximately 80 acres lying north of the Consolidated Channel and 5.25 acres lying south of the Consolidated Channel with Union Pacific reserving and retaining the underlying mineral interests, and reserving precisely defined surface entry and use rights to serve continuing oil operations. In addition, title to approximately 120 acres of land south of the Consolidated Channel

SUBJECT: AGREEMENTS FOR RELOCATION OF LAND RIGHTS AND INFRASTRUCTURE - FUTURE DEVELOPMENT AT BERTH 200

known as the "Western Peninsula" was confirmed in Union Pacific, free of the public trust. In 1994, the COLB acquired Union Pacific's interests.

The transfer of property interests is necessary to effect the Condock I Settlement special legislation amending the Tidelands Trust Grant. Chapter 926 of the Statutes of 1979 added paragraphs 14, 15 and 16 to Chapter 651 of the Statutes of 1929 (which amended and superseded the original Trust Grant in Chapter 656 of the Statutes of 1911). Paragraph 15 provides:

(a) Whenever it shall appear to the City of Los Angeles to be expedient and in the best interests of the state for the settlement of boundary and title disputes or for carrying out the purposes set forth in Sections 1 and 3 of this act, and it further appears that no substantial interference with the trust uses and purposes will ensue, the City of Los Angeles may exchange with any state agency, political subdivision, person, entity or corporation, or the United States, or any agency thereof, lands for lands of equal or greater value located within the area described as follows:

That certain parcel of land situated in the "Wilmington District" of the City of Los Angeles, County of Los Angeles State of California more particularly described as follows:

Beginning at the intersection of the centerline of Anaheim Street with the northwesterly line of Alameda Street; thence easterly along the centerline of Anaheim Street to its intersection with the boundary line common to the City of Los Angeles and the COLB; thence southeasterly and southwesterly along the common boundary line to an angle point approximately on the south line of the Cerritos Channel; thence northwesterly along a straight line to the intersection of easterly prolongation of the south line of C Street with the northwesterly line of Alameda Street; thence northeasterly along the northwesterly line of Alameda Street to the point of beginning. Any lands so acquired shall have the same status as to administration, control, and disposition as the lands for which they were exchanged.

(b) No such exchange shall be effective unless and until the State Lands Commission:

- (1) Finds that the lands to be acquired by the City of Los Angeles are of equal or greater value than the lands for which they are to be exchanged.
- (2) Approves the exchange.

(c) The lands exchanged by the City of Los Angeles may be improved (filled) and reclaimed by the recipient thereof subject to all necessary approvals by local, regional state, or federal entities. Upon the adoption of a resolution by the State Lands Commission finding and declaring that such

SUBJECT: AGREEMENTS FOR RELOCATION OF LAND RIGHTS AND INFRASTRUCTURE - FUTURE DEVELOPMENT AT BERTH 200

lands have been improved, filled, and reclaimed and have thereby been excluded from the public channels and are no longer available, useful, or susceptible of being used for navigation, fishing, and for other trust uses and purposes, and are no longer in fact tidelands or submerged lands, such lands shall thereupon be free from the public trust upon which they were held.

(d) Exchanges made pursuant to this section are hereby found to be of statewide significance and importance, and, therefore, any provision of any law, regulation, charter, or statute inconsistent with this section shall not be applicable to such exchange.

This 1979 amendment provides statutory authority for the exchanges necessary to relocate the easements and supersedes Los Angeles City Charter section 651(b) prohibiting the transfer of interests in tidelands absent approval by the City of Los Angeles voters.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an agreement to grant the COLB, Ultramar and Air Products alternate surface and subsurface areas that do not interfere with future development plans for the land at Berth 200 and the relocation of certain active pipelines and utilities. The relocation of the Pier "A" rail yard to Berth 200 was an approved element of the TraPac Container Terminal Project Environmental Impact Statement/Environmental Impact Report (EIS/EIR) certified by the Board in December 2007. As an administrative activity for which the underlying project has been previously evaluated for environmental significance, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(i) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

The exchange of rights related to surface rights with COLB, Ultramar, and Air Products will have no direct employment impact; however, the property rights are essential to the development of the Berth 200 rail yard and the development of the TraPac container terminal on-dock rail. Construction of these rail facilities will support an estimated 1,600 one-year-equivalent jobs during the construction phase.

FINANCIAL IMPACT:

No monetary consideration is to be given in connection with the proposed conveyance element of the Agreement, since a property exchange is contemplated. As a result of the property exchange, the Harbor Department's estimated gain in the land value is

SUBJECT: AGREEMENTS FOR RELOCATION OF LAND RIGHTS AND INFRASTRUCTURE - FUTURE DEVELOPMENT AT BERTH 200

\$6.49 million. The Harbor Department is expected to front fund the COLB for the construction activities discussed herein. Funds for the construction element of the COLB agreement in the amount of \$7.3 million have been requested to be budgeted in the Fiscal Year 2011/2012 capital budget, Account 54510, Center 1172, Program 000, as part of the annual budget adoption process, upon Board approval. Further, the Harbor Department is expected to fund the construction activities relative to Ultramar and Air Products as part of the Berth 200 Project. This will be a Harbor Department contract which is expected to be presented to the Board for approval in March 2012.

CITY ATTORNEY:

The City Attorney has approved the Agreements, the Order, and the Ordinance as to form and legality.

TRANSMITTALS:

1. Proposed Order
2. Proposed Ordinance
3. Site Map
4. Diagram of COLB's Existing Future Drill Areas
5. Diagram of COLB's Proposed Future Drill Areas and Active Wells
6. Diagram of COLB's Existing Wells
7. Diagram of COLB's Proposed Pipeline and Utility Corridor
8. Diagram of Ultramar and Air Products' Existing and New Pipeline Corridor
9. Agreements

FIS Approval: WP (initials)

City Attorney: TR (initials)


 KATHRYN McDERMOTT
 Deputy Executive Director

APPROVED:

 GERALDINE KNATZ, Ph.D.
 Executive Director

KM:RG:MK:raw
Author: M. Katnich
BL381raw COLB