		0150-11137-0001
TRANSMITTAL		
TO Eugene D. Seroka, Executive Director Harbor Department	DATE 2/14/19	COUNCIL FILE NO.
FROM The Mayor		COUNCIL DISTRICT 15

PROPOSED PERMIT NO. 916 WITH SHELL OIL COMPANY

Transmitted for further processing and Council consideration.
See the City Administrative Officer report attached.

MAYOR (Ana Guerrero) for

RHL:ABN:10190068

CAO 649-d

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date:	February 13, 2019	CAO File No. Council File No. Council District:	0150-11137-0001 15
To:	The Mayor		
From:	Richard H. Llewellyn, Jr., City Administrative Officer		
Reference:	Correspondence from the Harbor Department dated December 31, 2018; referred by the Mayor for report on January 4, 2019		
Subject:	**PROPOSED PERMIT NO. 916 WITH SHELL OIL COMPANY**		

RECOMMENDATION

That the Mayor:

1. Approve Harbor Department (Port) Resolution No. 18-8408 to authorize Permit No. 916 with Shell Oil Company; and,

2. Return the document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissions (Board) requests approval of Resolution No. 18-8408 authorizing proposed Permit No. 916 (Permit) with Shell Oil Company (Shell). The proposed Permit will grant Shell a 30-year lease agreement, beginning on the effective date of approval. In addition, the Permit will authorize Shell the right to continue using 11.57 acres of Port of Los Angeles (POLA) property (land and water) at Berths 167-169 in Wilmington to construct, operate, and maintain marine oil terminal and storage tanks. The Port states that the Permit is necessary to comply with the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) project. There are 34 marine oil terminals dispersed throughout California.

MOTEMS, operating under the California States Lands Commissions (State Lands), establishes and regulates minimum engineering, inspection, oversight, maintenance and upgrade criteria for marine oil terminals and oil spills to protect public health, safety and the environment. The MOTEMS requires all marine oil terminals to undergo an audit to determine the fitness of the marine structures, and needed repairs and upgrades for wharfs, piping, electrical and mechanical systems.

Shell is the United States based wholly-owned subsidiary of Royal Dutch Shell, which is among one of the largest oil companies in the world. The property is leased for the operation of a marine liquid bulk terminal, which handles products such as crude oil, natural gas liquids, and refined products. The original Permit No. 614 was granted to Shell for a 35-year term, from February 1988 through February 2023. The proposed Permit will supersede Permit 614 upon execution.

In 2011, the Port developed a MOTEMS Implementation Strategy (MIS), which provides an organizational strategy and tenant guidelines for uniform negotiations and capital investment limitation, of $7.5 million, for all MOTEMS compliant projects. In summary, the MIS proposes guidelines for negotiating long-term permits and amortizing investments for new MOTEMS projects.

MOTEMS audited the marine oil terminal at Shell to determine the fitness of the marine structures, embankment, piping, electrical, mechanical, and fire suppression equipment. The Port states that the existing wharves at Berths 167-169 have experienced extensive deterioration and have been classified as unfit and in need for service by MOTEMS. As a result of the age of the wharves, the Port states that bringing the marine oil terminal in compliance with MOTEMS would be difficult and instead is recommending to replace, repair, and renovate the structure to bring it up to code. According to the Port, the Board certified the Final Environmental Impact Report (EIR) for this project in August 2018.

Shell is financially responsible for rental payments due to the Port. In the current Permit, Shell pays the Port approximately $1,589,160 per year as fixed rental compensation to lease the land, subsurface land, and water from the POLA. The Permit requires an adjustment to the rental compensation based on the following: 1) an annual Consumer Price Index (CPI), pursuant to City Charter Section 607; 2) reset land rent every five years, according to the real estate market rates and applicable charges in the POLA Tariff No. 4. (Rules and Regulations); and, 3) other compensational charges under the Permit. Under the proposed Permit, the annual compensation for the land rental amounts will continue based on the current market value for the property and other applicable charges in Tariff No. 4. According to the Port, this includes the Board policy for the Rate of Return (ROR) on the land, annual CPI adjustments, and a 50 percent discount for subsurface rights, authorized by the POLA.

The Port and Shell have reached a proposed agreement to implement the MOTEMS wharf improvement project. This will include the approval of the proposed 30-year Permit to continue the operation of the Berths 167-169 marine oil terminal, tank farm, and underground pipelines. The rental rate paid by Shell for the wharves is approximately $900,000 each year for each berth. According to the Port, the rental rate for the wharves will continue until Shell fulfills a 12 percent ROR on land on the POLA's investment of $7.5 million per wharf structure. Afterward, the Permit includes provision for the elimination of the minimum wharf rent obligation when the Port achieves the 12 percent target ROR from the POLA's investment of $7.5 million.

The Port states that the minimum wharf rent is to guarantee that the $7.5 million investment by the Port in the new wharf will be paid back at 12 percent interest in business generated through the wharf and other fees. (The $7,500,000 x 12% will equal $900,000 per year.) The Port states that the department will cap the number of years that Shell will be subject to the minimum wharf rent. The proposed Permit includes the elimination of the minimum wharf rent obligation when the Port achieves the targeted ROR of 12 percent of the Port's investment of $7.5 million. The Port expects to achieve the ROR between eight to eleven years, depending on the throughput (production) volumes and related tariff charges paid by Shell.

The Port states that the anticipated tariff charges for Shell are expected to be in excess of the minimum wharf rental amount. During the last three years annual tariff revenue has averaged approximately $2.59 million, which exceeds the $900,000 in wharf rent. In Fiscal Year 2018, Shell paid compensation to the Port of $3,077,840 (approximately $1,758,974 in wharfage fees and $1,318,866 in land rent) under the existing Permit No 634.The Port does not anticipate a loss of revenue by removing the minimum wharf rent.

The Port estimates to construct and fulfill the obligations of the new MOTEMS compliant wharves project and terminal structure will cost approximately $33,136,410 for the first berth. The Port will invest up to $7.5 million based on the MIS and will be responsible for paying for any costs that exceeds $33,136,410. The Port states that Shell will invest approximately $25,636,410. The Port also will be financially responsible for costs to maintain the rock slopes and engineer dredging depths (over 40 feet) for the respective berths on the property. The Port anticipates that the costs for maintenance of the rock slopes and dredging will be approximately $200,000 over 10 years. Shell will be responsible for MOTEMS requirements related to compliance with regulations and improvements for the property, including but not limited to, the wharf structure, property maintenance and operation, and other project features, except those as prescribed in the Permit.

The Port states that Shell proposes to construct one wharf immediately and have the option to construct a second wharf within five years, if business demands exceed capacity. The minimum annual rent for one wharf is $900,000 and if the second wharf is constructed, the minimum rent will increase to $1.8 million. The Port will have to review and approve any prospective plans by Shell to construct a second wharf structure.

The City Attorney has approved the proposed Resolution as to form and legality. In accordance with Charter Section 606, the Mayor and Council approval are required because the lease term exceeds five years. The Port states that the Board reviewed the environmental assessment and certified the Final Environmental Impact Report (EIR) for this project in August 2018. Therefore, the Port has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) and Los Angeles City CEQA Guidelines.

FISCAL IMPACT STATEMENT

The proposed Harbor Department (Port) request for Permit No. 916 (Permit) would ensure that the Shell Oil Company (Shell) would continue its marine oil terminal in the POLA and continue to pay the Port a fixed rental compensation for land rent of approximately $1.6 million. The Port estimates that construction of the new wharf projects to comply with MOTEMS will cost up to $33,136,410. The Port will invest up to $7.5 million and Shell will invest approximately $25,636,410. The Port will be responsible for paying for any costs that exceeds $33,136,410. The proposed compensation will meet the Port's rate of return for land and improvements. The proposed Permit is for 30 years, and will supersede existing Permit 614, upon execution. During the 2018 fiscal year, Shell paid revenue to the Port of $3,077,840. Shell will be responsible for all costs associated with property maintenance and operation, including to payment for project features in the Permit.

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