



Eric Garcetti Mayor, City of Los Angeles

Board of Harbor Commissioners

Ambassador Vilma S. Martinez President

David Arian Vice President

Patricia Castellanos

Anthony Pirozzi, Jr.

Edward R. Renwick

Eugene D. Seroka Executive Director

September 16, 2014

Honorable Members of the City Council of the City of Los Angeles

CD No. 15

Attention: Mr. Michael Espinosa, City Clerk's Office

SUBJECT: ORDER NO. 14-7164 – FIRST AMENDMENT TO PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.

Pursuant to Section 606 of the City Charter, enclosed for your approval is proposed Permit No. 897 which reflects compensation set forth in a negotiated Settlement Agreement and Release of Claims in connection with overpaid percentage rent under prior Permit 768. The proposed Permit was approved by the Board of Harbor Commissioners at its meeting of July 24, 2014.

RECOMMENDATION:

- 1. The City Council approve Permit No. 897 with Catalina Channel Express, Inc.;
2. Find that the recommendation action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II Sections 2 (f) and 2 (i) of the Los Angeles City CEQA Guidelines; and
3. Return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,

[Handwritten signature of Amber M. Klesges]

AMBER M. KLESGES Commission Secretary

cc: Trade, Commerce, & Tourism Committee Councilman Bonin, encs. Councilman LaBonge, encs. Councilman Buscaino, encs Mandy Morales, Mayor's Office, encs. Erick Martell, POLA Legislative Analyst, encs.

Alvin Newman, CAO, encs. Lisa Schechter, CD4, encs. Aaron Gross, Government Affairs, encs. Christine Yee Hollis, CLA, encs.

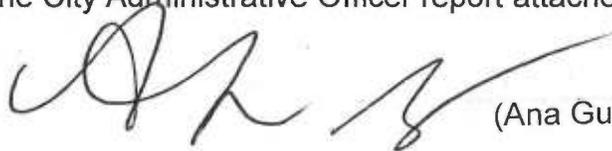
0150-09708-0001

**TRANSMITTAL**

TO Eugene D. Seroka, Executive Director Harbor Department	DATE SEP 15 2014	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED FIRST AMENDMENT TO PERMIT NO. 897 WITH  
CATALINA CHANNEL EXPRESS, INC.**

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

 (Ana Guerrero)

MAYOR

MAS:ABN:10150016t

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: August 29, 2014

CAO File No. 0150-09708-0001  
Council File No.  
Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Correspondence from the Harbor Department dated July 31, 2014; referred by the Mayor's Office for report dated August 4, 2014

Subject: **PROPOSED FIRST AMENDMENT TO PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.**

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### SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 14-7164 authorizing a proposed First Amendment (Amendment) to Permit No. 897 with Catalina Channel Express, Inc. (Catalina) at Berth 95 in the Port of Los Angeles (POLA). In March 2012, the Mayor and Council authorized the Port to lease different Berths to Catalina to continue operating public passenger vessel ferry services and a facility to transport tourist and commuters between San Pedro and Catalina Island under a 25-year contract agreement (C.F. 12-0344). The Port staff had to submit a Settlement Agreement and Release of Claims (Settlement Agreement) to the Board to authorize a final settlement of any and all claims, disputes and controversies connected with the relocation to different Berths and rental compensation under the original agreement with Catalina. The proposed Amendment sets forth the changes in the Settlement Agreement as they relate to the agreed upon relocation. In addition, the proposed Amendment includes changes to the premises and rental compensation for the next five-year period, from July 25, 2014 to July 24, 2019, and continued construction, operation and maintenance of Catalina's facilities. According to the Port, all other terms and conditions of the Permit will remain the same.

The above-referenced Resolution No. 14-7164, amending the proposed Permit with Catalina and this report, incorporate revised information received from the Port subsequent to the initial request submittal. The Settlement Agreement was subsequently submitted and approved by the Board

### DISCUSSION

Catalina had been operating its passenger ferry services since July 1981 and had a ten-year agreement (Permit No. 768), which expired in 2005. Since the expiration of the Permit No. 768, Catalina has been under a hold-over status (from month-to-month) until approval of Permit 897. Under Permit 897, Catalina had to relocate from its previous facilities at Berth 96 to new facilities at Berth 95 because of the expansion and redevelopment of the China Shipping Holding Company (China Shipping), as explained below.

China Shipping is one of the largest shipping lines and container terminals at the POLA. China Shipping had planned to expand its container terminal operations through the development of three construction phases to meet future business capacity. In 2001, China Shipping filed a lawsuit against the Port and City of Los Angeles (City) over a permit with to operate a container terminal and an environmental impact report (EIR) generated in 1997 to support that permit. The Port subsequently agreed to settle a damage claim from the lawsuit filed by China Shipping through an amendment to the permit with China Shipping. Catalina, which had occupied land and water spaces at Berth 95 and 96 in San Pedro to operate a cruise terminal facility for passenger operations, was requested to relocate its facility to the contiguous POLA Berth 95 premises to accommodate the future expansion of the China Shipping.

The relocation to the new land parcel provided space for Catalina's ferry services, maintenance, handling, storage and forwarding of various items of merchandise and goods that are shipped to and from Catalina Island. As a result of the relocation, the Port negotiated and approved a new agreement (Permit 897) with Catalina because of the relocation to the new terminal site and the revised contractual provisions. The Port states that Catalina has invested approximately \$5 million with the relocation and been responsible for most of the improvements at the new terminal locations, including adaptive reuse of an existing Port building. Per the Permit, any tenant improvements that Catalina makes on the leased property, during the contract term will become the property of the Port. The Port was responsible for expending funds to improve and reconfigure some of the property in which Catalina relocated. According to the Port, modifications to the premises were necessary for the efficient and safe use of the facility, which required additional land and submerged land areas.

The proposed First Amendment to the Catalina contract will update the Permit to reflect the additional POLA property size of 19,424 square feet of submerged land area and 1,190 square feet of land area. As a result of the additional land area, there is a corresponding increase to the fixed monthly compensation amount that will be included in the proposed Amendment. The following table will show the proposed fixed minimum amount that will be due from July 2012 to July 2024:

Permit Year	Periods Covered	Fixed Minimum Amount Due Per Month
Year 1	July 25-2012 – July 24, 2013	\$ 5,027
Year 2	July 25, 2013 to November 30, 2013	\$ 5,865
	December 1, 2013 to April 30, 2014	\$ 6,838
	May 1, 2014 to July 24, 2014	\$ 7,777
Year 3	July 25, 2014 – July 24, 2015	\$ 8,753
Year 4	July 25, 2015 – July 24, 2016	\$ 9,730
Year 5 - 7	July 25, 2016 – July 24, 2019	\$ 10,707
Year 8 - 13	July 25, 2019 – July 24, 2024	Reset to Market Rate

As part of the Permit, Catalina compensated the Port in one of two ways to lease the property: 1) a fixed compensation amount or 2) a percentage compensation (percentage of gross receipts). Beginning on July 25, 2023, the Port states that compensation for Catalina will be amended and they will be responsible to pay the higher of the two charges for fixed minimum compensation or

percentage compensation. According to the Port, the fixed minimum compensation will be adjusted annually by the Consumer Price Index (CPI), pursuant to the Permit. The Port states that rental compensation assessment is consistent with Departmental policy, which is based on a minimum ten percent rate of return on the 2012 estimate, per square foot for land value and submerged land value. As stated above, additional revenue to the Port will begin to accrue in 2023.

The City Attorney has reviewed and approved the proposed Amendment to the lease agreement as to form. Since the proposed lease agreement is a property lease, the request is not subject to the provisions of Charter Section 1022. The Port Director of Environmental Management has determined that the proposed action is an administrative action and therefore is exempt from the California Environmental Quality Act (CEQA) in accordance with Articles Section 2(f) and 2(i) of the Los Angeles CEQA Guidelines. The Port states that the relocation of Catalina Express was included and certified in the respective EIRs for China Shipping and the San Pedro Waterfront Projects.

### **RECOMMENDATION**

That the Mayor approve Harbor Department (Port) Resolution No. 14-7164 authorizing a proposed First Amendment to Permit No. 897 (Permit) with Catalina Channel Express, Inc. to implement changes to the Permit as part of a settlement agreement and adjustments to rental compensation during the next five years, from July 2014 to July 2019, and return the document to the Port for further processing, including Council consideration.

### **FISCAL IMPACT STATEMENT**

Approval of the proposed First Amendment to Permit No. 897 between the Harbor Department (Port) and Catalina Channel Express, Inc. (Catalina) will include the negotiated rental changes in the fixed minimum compensation for the five-year period from July 2014 to July 2019, the Consumer Price Index, and percentage compensation (percentage of gross receipts). The annual compensation is phased over the first five years to the contract period to reach the full annual market rent rate of \$128,484 in the fifth year.

### **TIME LIMIT FOR COUNCIL ACTION**

Pursuant to Charter Section 606, "Process for Granting Franchises, Permits, Licenses and Entering Into Leases," and the Los Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes actions disapproving a contract that is longer than five year within 30 days after submission to Council, the contract will be deemed approved.

CITY OF LOS ANGELES

INTER-DEPARTMENTAL CORRESPONDENCE

DATE: July 31, 2014

TO: The Honorable Eric Garcetti  
Mayor, City of Los Angeles

FROM: Amber M. Klesges, Commission Secretary  
Harbor Department

SUBJECT: **CHARTER SECTION 606** – FIRST AMENDMENT TO PERMIT NO. 897  
WITH CATALINA CHANNEL EXPRESS, INC.

OFFICE OF THE MAYOR  
RECEIVED  
2014 AUG -4 AM 11:14  
CITY OF LOS ANGELES

In accordance with Executive Directive No. 4, attached for your review is a copy of a report recommending approval of the First Amendment to Permit No. 897.

Harbor Department approved the proposed Amendment at the Board of Harbor Commissioners meeting of July 24, 2014.

It is respectfully recommended that your review be completed as soon as possible. Once the required City Administrative Officer's report is completed and returned to the Harbor Department, it will be forwarded to the City Council for final consideration.

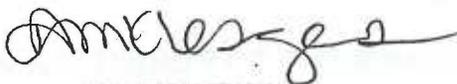
A copy of the Board report is attached for your review. If you have any questions regarding the transmitted documents, please contact Amber M. Klesges at (310) 732-2642.

cc: Mandy Morales, Mayor's office  
Aaron Gross, Mayor's Office  
Erick Martell, Harbor Legislative Analyst  
City Attorney

2014 AUG -4 PM 3:50  
CITY ADMINISTRATIVE OFFICER

RECOMMENDATION APPROVED AND  
ORDER No: 14-7164 ADOPTED  
BY THE BOARD OF HARBOR COMMISSIONERS

July 24, 2014.



BOARD SECRETARY



**THE PORT  
OF LOS ANGELES**

Executive Director's  
Report to the  
Board of Harbor Commissioners

7-24-14  
6

DATE: JULY 9, 2014

FROM: REAL ESTATE

SUBJECT: ORDER NO. 14-7164 - FIRST AMENDMENT TO PERMIT NO. 897  
WITH CATALINA CHANNEL EXPRESS, INC.

**SUMMARY:**

On January 5, 2012, the Board of Harbor Commissioners (Board) granted Permit No. 897 (Permit) to Catalina Channel Express, Inc. (Catalina) for premises at Berth 95 (Premises). Permit No. 897 authorized Catalina to undertake the construction, operation, and maintenance of a public passenger facility for a 25-year term. The proposed First Amendment to Permit No. 897 (First Amendment) addresses the need to set forth the dimensions of the permit premises, as completed, and adjust the compensation accordingly. A Settlement Agreement and Release of Claims (Settlement Agreement) is being presented to the Board concurrently in Closed Session to settle any and all claims, disputes and controversies associated with the relocation of Catalina as well as those in connection with overpaid percentage rent under the prior permit (Permit No. 768). The compensation set forth in this First Amendment reflects the negotiated settlement amounts.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Approve the proposed First Amendment to Permit No. 897 with Catalina Channel Express, Inc.;
2. Direct the Board Secretary to transmit the First Amendment to Permit No. 897 to the City Council for approval pursuant to Charter Section 606 of the City Charter;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the First Amendment to Permit No. 897 upon approval by City Council; and
4. Adopt Order No. 14-7164.

DATE: JULY 9, 2014

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SUBJECT: FIRST AMENDMENT TO PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.

**DISCUSSION:**

Background and Context - Catalina has been operating the passenger ferry located at Berth 96 to Catalina Island since July 1, 1981 under various entitlements, including a 30-day month-to-month revocable permit from 1981 to 1990 (RP 1467), a five-year permit from 1990-1995 (Permit No. 639), and a ten-year permit from 1995-2005 (Permit No. 768).

The successor permit to Permit No. 768 was not completed prior to its expiration. Catalina was granted holdover status thereafter and continued its occupancy under the same terms and conditions as Permit No. 768.

During the years prior to and after the expiration of Permit No. 768, the adjoining property to the north, held by China Shipping Holding Company, LTD. (China Shipping), began undergoing redevelopment that included expansion of its Berth 100 wharf and backlands southward, to encompass the Premises at Berth 96, which required relocation of Catalina. The need to proceed with the China Shipping expansion in a timely fashion required Catalina to be responsible for all improvements at the new location, including adaptive reuse of an existing City of Los Angeles Harbor Department (Harbor Department) building. Catalina invested approximately five million dollars (\$5,000,000) in effecting its relocation.

Pursuant to Permit No. 897, approved by the Board in 2012, Catalina relocated from its previous facilities at Berth 96 to the new Premises at Berth 95. Modifications to the original plans were necessary for the efficient and safe use of the facility, which required additional land and submerged land areas. As a result of these changes, it is now necessary to amend the Permit in order to account for the changes and adjust the rent accordingly.

The First Amendment compensation schedule takes into account negotiated rates for all parcels, and forgoing percentage rent and Consumer Price Index (CPI) adjustments for an additional period of time, as a condition of the Settlement Agreement.

**Proposed Permit Amendment Summary**

Premises: The First Amendment to Permit No. 897 (Transmittal 1) updates the Permit Premises (Transmittal 2) to reflect the additional areas noted above. The new Premises map (LAHD Drawing No. 45639-1) will be substituted for the existing Exhibit A.

DATE: JULY 9, 2014

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SUBJECT: FIRST AMENDMENT TO PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.

Compensation: The additional 19,424 square feet (s.f.) of submerged land area and 1,190 s.f. of land area resulted in a corresponding increase to the Fixed Monthly Compensation as follows:

Permit Year	Period Covered	Fixed Minimum Amount Due
Year 1	July 25, 2012 – July 24, 2013	\$ 5,027/mo
Year 2	July 25, 2013 to November 30, 2013	\$ 5,865/mo
	December 1, 2013 to April 30, 2014	\$ 6,838/mo
	May 1, 2014 to July 24, 2014	\$ 7,777/mo
Year 3	July 25, 2014 – July 24, 2015	\$ 8,753/mo
Year 4	July 25, 2015 – July 24, 2016	\$ 9,730/mo
Years 5-7	July 25, 2016 – July 24, 2019	\$10,707/mo
Years 8-13	July 25, 2019 – July 24, 2024	Reset to Market Rate

In addition to the above, the compensation has been amended to reflect that beginning on July 25, 2023, Catalina will begin to pay the higher of:

- (1) the Fixed Minimum Compensation; or
- (2) Percentage Compensation (percentage of Gross Receipts)

Similarly, beginning in 2023, the Fixed Minimum Compensation will be adjusted by the CPI, adjusted from the year of the last Fixed Minimum Compensation reset. As previously mentioned, this compensation schedule is part of the negotiated terms as more fully described in the Settlement Agreement.

Other Terms and Conditions: All other terms and conditions of the Permit shall remain the same.

#### **ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an Amendment to Permit No. 897 with Catalina to set forth the final permit premises and adjust the compensation accordingly. The relocation of Catalina was included and analyzed in the China Shipping Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR) and the San Pedro Waterfront FEIS/FEIR which were certified on December 8, 2008 and September 29, 2009, respectively. As an administrative activity related to an activity for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of the California Environmental Quality Act (CEQA), the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II Sections 2(f) and 2(i) of the Los Angeles City CEQA Guidelines.

DATE: JULY 9, 2014

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SUBJECT: FIRST AMENDMENT TO PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.

**ECONOMIC BENEFITS:**

This Board action will have no employment impact.

**FINANCIAL IMPACT:**

Consistent with the terms of Permit No. 897, annual compensation is phased over the first five years of the amendment period to reach the full annual market rent of \$128,484 in the fifth year. Compensation is consistent with the Board's policy based on a minimum ten percent rate of return on the 2012 estimated land value of \$22.00 per square foot and the estimated submerged land value of \$7.33 per square foot. As part of the negotiated settlement, Parcels 3 and 6 (submerged land) will accrue no rent until 2019. Additional revenue to the Harbor Department will begin to accrue in 2023, when payment of percentage rent commences.

**CITY ATTORNEY:**

The proposed First Amendment has been approved as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

1. First Amendment to Permit No. 897
2. Site Map

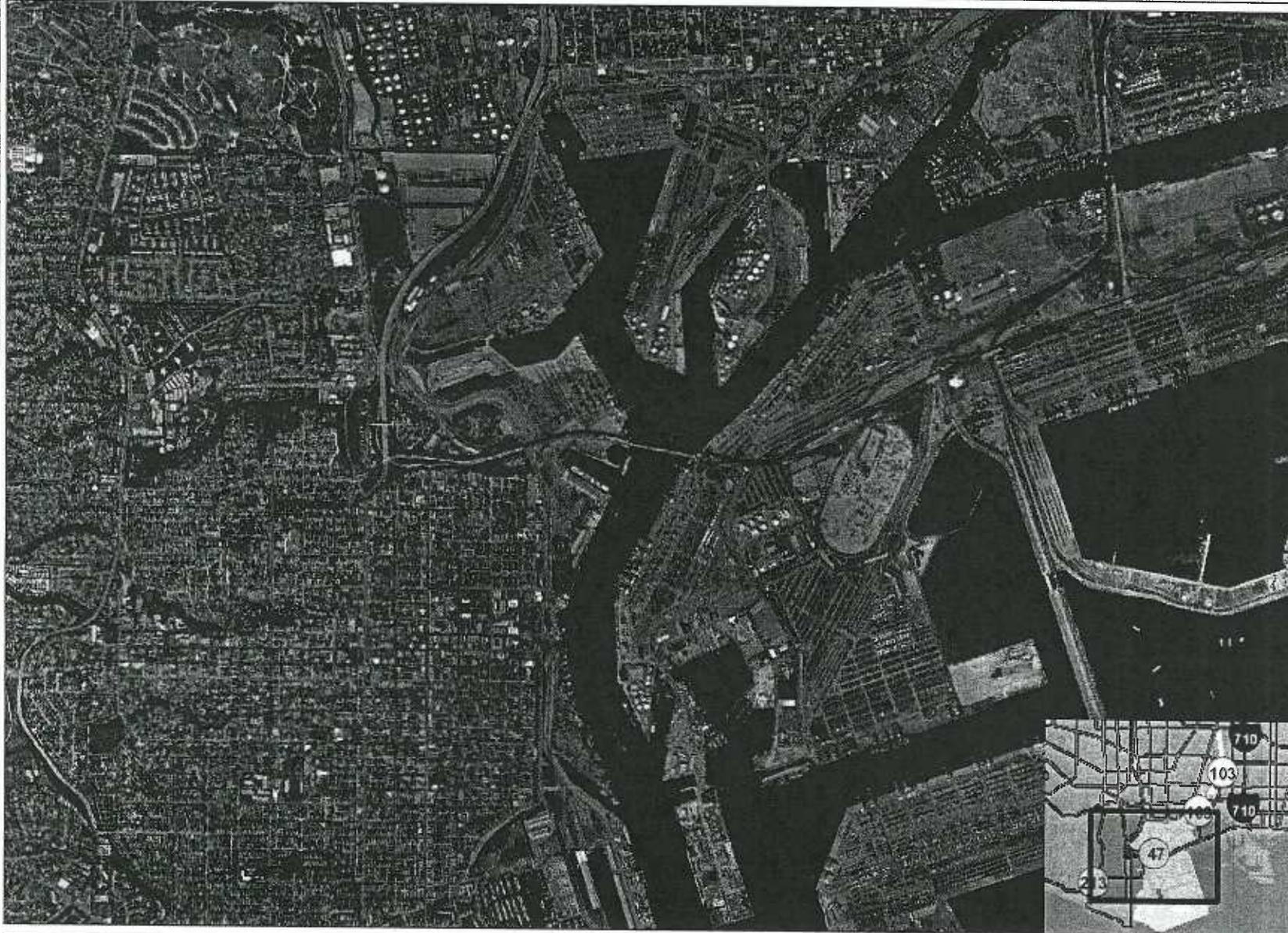
  
JACK O. HEDGE  
Director of Real Estate

APPROVED:  
  
EUGENE D. SEROKA  
Executive Director

FIS Approval:  (initials)  
CA Approval:  (initials)  
  
DAVID L. MATHEWSON  
Interim Deputy Executive Director

# Catalina Channel Express, Inc.

Date Printed: 1 July 2014



## Legend

L3\_6477\_1720a.jp

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3

7,392.6

SCALE 1: 44,356

0

7,392.6 Feet

Projection: WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION



TRANSMITTAL 2