



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the
Board of Harbor Commissioners

DATE: JULY 26, 2018

FROM: ENVIRONMENTAL MANAGEMENT

**SUBJECT: RESOLUTION NO. _____ AND ORDER NO. _____ - SET
ASIDE BNSF RAILWAY COMPANY SOUTHERN CALIFORNIA
INTERNATIONAL GATEWAY (SCIG) PROJECT AND
ENVIRONMENTAL APPROVALS**

SUMMARY:

Staff requests that the Board of Harbor Commissioners (Board) adopt a proposed Order that sets aside the certification of the BNSF Railway Company (BNSF) Southern California International Gateway (SCIG) Project Final Environmental Impact Report (FEIR) in compliance with the California Environmental Quality Act (CEQA) as well as project approval and specified actions and approvals as set forth in Resolution No. 13-7451 adopted on March 7, 2013, as memorialized in the March 8, 2013 Notice of Determination (NOD). The Order also directs the Executive Director and City of Los Angeles (City) Harbor Department (Harbor Department) staff to suspend any and all SCIG Project activities until such time as the City and BNSF Railway Co. (BNSF) have taken the actions necessary to bring the determinations, findings and decisions into compliance with the CEQA. The Order also directs the Board Secretary to request that the City Council also set aside its May 8, 2013 adoption of the determination by the Harbor Department that the SCIG Project and the proposed 50-year Permit and Site Preparation and Access Agreement (SPAA) were assessed in an FEIR prepared in accordance with the CEQA.

This Order is mandated by a court order that requires the City to set aside specified actions, resolutions and orders including SCIG Project FEIR certification and approvals predicated on the certified FEIR.

A separate companion Board Order sets aside the approval of all real property approvals for the SCIG Project.

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 California Environmental Quality Act (CEQA) in accordance with Article II, Section 2 (b)(f) and (h) of the Los Angeles City CEQA Guidelines;

SUBJECT: SET ASIDE SCIG PROJECT AND ENVIRONMENTAL APPROVALS

2. Adopt Order No. _____ and Resolution No. _____.
3. The Secretary shall certify to the adoption of Order No. _____ by the Board of Harbor Commissioners of the City of Los Angeles and shall cause a copy of the same to be presented to the City Council and request that the City Council, pursuant to court order, set aside the May 8, 2013 adoption of the determination by the Los Angeles Harbor Department that the project and the proposed 50-year Permit and SPAA were assessed in an EIR prepared in accordance with the California Environmental Quality Act, under the Council File Nos. 13-295, 13-0295-S1, 13-0295-S2, 13-0295-S3, 13-0295-S4, 13-0295-S5, 13-0295-S6, 13-0295-S7, 13-0295-S8.

DISCUSSION:

Background/Context – The SCIG Project is a \$500 million investment by BNSF to build a new, state of the art intermodal “near dock” railyard facility located within four miles of the San Pedro Bay Ports (Ports) and connected to the Alameda Corridor. The proposed SCIG Project would be located on an approximately 185-acre site comprised of 117 acres of Harbor Department land and 68 acres of land BNSF will acquire from private parties.

Past Board Actions – On March 7, 2013, the Board adopted Resolution No. 13-7451, which certified the SCIG Project FEIR in compliance with the CEQA, and adopted related documents and findings and approved the SCIG Project, as evidenced by the March 8, 2013 Notice of Determination (NOD).

Past City Council Actions – On May 8, 2013, City Council adopted a Motion that: (1) certified the SCIG Project FEIR in compliance with CEQA, (2) adopted related findings, Statement of Overriding Considerations and a Final Mitigation Monitoring and Reporting Program, (3) affirmed the Board’s certification of the FEIR, related findings, Statement of Overriding Considerations and a Final Mitigation Monitoring and Reporting Program (MMRP) and Project approval, and (4) denied eight appeals of the Board’s CEQA decision, under California Public Resources Code Sec. 21151(c). Such City Council actions were taken under Council File Nos. 13-0295, 13-0295-S1, 13-0295-S2, 13-0295-S3, 13-0295-S4, 13-0295-S5, 13-0295-S6, 13-0295-S7, 13-0295-S8 (collectively the CEQA Council Files).

Legal Challenges – Seven lawsuits challenging the SCIG Project FEIR pursuant to CEQA were filed in June 2013 in California state court against the City and real party in interest, BNSF.¹ After a November 2015 trial of the consolidated CEQA claims, the trial court ruled in favor of the City on some CEQA issues, but concluded that certain specific environmental impacts required additional analysis that invalidated the SCIG FEIR.

¹ The lawsuit parties included agencies (City of Long Beach, Long Beach Unified School District, South Coast Air Quality Management District), environmental and community groups (Coalition for a Safe Environment, Coalition for Clean Air, East Yard Communities for Environmental Justice and Natural Resources Defense Council), five local businesses (California Cartage, Fast Lane Transportation, L.A. Harbor Grain, San Pedro Forklift and Three Rivers Trucking) and two residents. The California Attorney General also intervened in 2014.

SUBJECT: SET ASIDE SCIG PROJECT AND ENVIRONMENTAL APPROVALS

On January 12, 2018, the California Court of Appeal overturned the trial court's 2016 ruling on all EIR analysis issues appealed by the City and BNSF, except for two air quality issues to be further analyzed (ambient air pollutant concentrations and cumulative impacts of such pollutant concentrations). On April 11, 2018 the California Supreme Court denied the petitioners' and Attorney General's petitions for review.

The Court of Appeal sent the case back to the trial court, which issued an order consistent with the appeal decision. The court's order mandates that the City take the actions listed below in this Order and companion action, and "suspend any and all [SCIG] project activities pursuant to or in furtherance of these determinations, findings and decisions until respondents have taken all actions necessary to bring the determinations, findings and decisions into compliance with CEQA."

Proposed Order – As required by court order, the proposed Order in this action effectuates the following:

(1) Sets aside the following actions, resolutions, and orders:

- The Los Angeles Board of Harbor Commissioners' March 7, 2013 certification of the Environmental Impact Report for the Southern California International Gateway Project, State Clearinghouse Number 2005091116, as memorialized in the March 8, 2013 Notice of Determination, and Resolution No. 13-7451, adopted by Board of Harbor Commissioners re Final Environmental Impact Report re Southern California International Gateway (SCIG) Project; and
- The Los Angeles Board of Harbor Commissioners' March 7, 2013 adoption of: (i) the Findings of Fact and Statement of Overriding Considerations and (ii) the Mitigation Monitoring and Reporting Program, all in connection with the Environmental Impact Report for the Southern California International Gateway Project, State Clearinghouse Number 2005091116, as memorialized in the March 8, 2013 Notice of Determination, and Resolution No. 13-7451, adopted by Board of Harbor Commissioners re Final Environmental Impact Report re Southern California International Gateway (SCIG) Project; and

(2) Directs the Executive Director and Harbor Department staff to suspend any and all project activities pursuant to or in furtherance of these determinations, findings and decisions until respondents have taken all actions necessary to bring the determinations, findings and decisions into compliance with CEQA; and

DATE: JULY 26, 2018

PAGE 4 OF 6

SUBJECT: SET ASIDE SCIG PROJECT AND ENVIRONMENTAL APPROVALS

(3) Directs the Board Secretary to submit the proposed Order to the City Council and request that the City Council, pursuant to court order, set aside the following actions, resolutions, and orders:

- The Los Angeles City Council's May 8, 2013 (i) adoption of the determination by the Los Angeles Harbor Department that the project and the proposed 50-year Permit were assessed in an EIR prepared in accordance with the California Environmental Quality Act, under the Council File Nos. 13-295, 13-0295-S1, 13-0295-S2, 13-0295-S3, 13-0295-S4, 13-0295-S5, 13-0295-S6, 13-0295-S7, and 13-0295-S8.

Companion Action – As required by court order, a separate Board Order effectuates the following:

(1) Sets aside the following actions, resolutions, and orders:

- The Los Angeles Board of Harbor Commissioners' approval on March 21, 2013 of the Site Preparation and Access Agreement and Permit No. 901 with the BNSF Railway Company, as memorialized in the March 8, 2013 Notice of Determination, and the March 21, 2013 Order No. 13-7125, and Board Order 13-7125 re SPAA & Permit 901; and

(2) Directs the Board Secretary to submit the proposed Order to the City Council and request that the City Council set aside the following actions, resolutions, and orders:

- The Los Angeles City Council's May 8, 2013 approval of the Site Preparation and Access Agreement and Permit 901 with the BNSF Railway Company for the construction, operation and maintenance of the SCIG facility, all as evidenced by the May 9, 2013 Notice of Determination and May 8, 2013 Los Angeles City Council Motions 10-A, 10-B (as Amended), 10-D and 10-E under Council File No. 13-0398.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an Order that sets aside the BNSF SCIG Project approval, FEIR certification and adoption of related documents and findings. As setting aside project approvals is a ministerial, administrative activity in response to a court order, the Director of Environmental Management has determined that the proposed action is administratively exempt from the CEQA in accordance with Article II, Section 2(b)(f) and (h) of the Los Angeles City CEQA Guidelines.

DATE: JULY 26, 2018

PAGE 5 OF 6

SUBJECT: SET ASIDE SCIG PROJECT AND ENVIRONMENTAL APPROVALS

FINANCIAL IMPACT:

The proposed Board action will set aside the specified actions and approvals predicated on the certification of the SCIG Project FEIR including Order No. 13-7125 which approved the SPAA and Permit No. 901 with BNSF for the SCIG Project. In accordance with the terms of the SPAA and Permit No. 901, revenues of \$6,663,682 were budgeted to be invoiced and recorded within A43010 in FY 2019. The proposed Board actions will result in BNSF not being invoiced in FY 2019 under the terms of the SPAA and Permit No. 901.

In addition to budgeting for the revenues anticipated to be invoiced in FY 2019 related to the SCIG Project, an equal \$6,663,682 was budgeted to A59810 (Provisions for Bad Debts – Trade) within the FY 2019 operating expense budget to account for collection uncertainty related to the ongoing litigation surrounding the SCIG Project. The proposed Board actions will result in this provision related to the SCIG Project being unused in FY 2019 so long as BNSF is not invoiced under the terms of the SPAA and Permit No. 901.

Therefore, the proposed Board actions will not have a financial impact on the Harbor Department aside from staff time associated with undertaking these proposed actions. Further financial details regarding rents collected by BNSF from third party tenants operating on the SCIG Project site as well as tolled license fees payable by BNSF to the Harbor Department since the Effective Date of the SPAA and Permit No. 901 will be brought before the Board in a separate action.

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the Order as to form and legality.

DATE: JULY 26, 2018

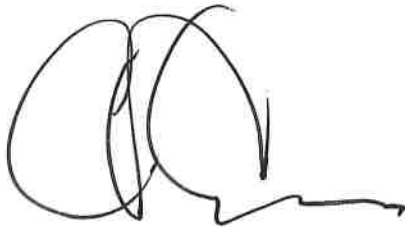
PAGE 6 OF 6

SUBJECT: SET ASIDE SCIG PROJECT AND ENVIRONMENTAL APPROVALS

TRANSMITTALS:

1. Proposed Order

FIS Approval: MB
CA Approval: JM



CHRISTOPHER CANNON
Director of Environmental Management



For: MICHAEL DIBERNARDO
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

CC/yo
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