

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: May 3, 2013

CAO File No. 0150-09961-0000

Council File No.

Council District: 15

To: The Mayor
The City Council

From: Miguel A. Santana, City Administrative Officer



Reference: Correspondence from the Harbor Department dated April 2, 2013

Subject: **PROPOSED ORDER NO. 13-1725: 1) SITE PREPARATION AND ACCESS AGREEMENT AND 2) PERMIT NO. 901 WITH BNSF RAILWAY COMPANY TO CONSTRUCT, OPERATE AND MAINTAIN THE SOUTHERN CALIFORNIA INTERNATIONAL GATEWAY FACILITY**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Order No. 13-7125 which authorizes the Port to enter into a Site Preparation and Access Agreement and Permit No. 901 with the Burlington Northern Santa Fe Railway Company (BNSF) as follows:

- The Site Preparation and Access Agreement (SPAA) authorizes BNSF to use and occupy Port of Los Angeles (POLA) property to develop, prepare, coordinate and construct a near-dock, rail yard Intermodal Container Transfer Facility (ICTF) on approximately 102.75 acres of land on POLA property. The initial term of the Agreement is for five years, with two one-year options, for a total of seven years. The Port states that the total contract option could be extended up to 12 years, if certain provisions in the Agreement have not been completed.
- The Permit No. 901 (Permit) authorizes BNSF to operate and maintain the new ICTF, which will be called the Southern California International Gateway (SCIG) Project. BNSF will provide a \$500 million private investment to assist in the planning, development and construction of the SCIG. The term of the proposed Permit is 50 years. The proposed SCIG Project would be constructed and operated by BNSF on a total of approximately 185 acres of land, including the proposed lease of approximately 102.75 acres from the POLA. BNSF plans to acquire the other 82 acres of land from nearby non-POLA owned property in the cities of Carson and Long Beach.

The proposed Order No. 13-7125 also requests approval of the Environmental Impact Report (EIR) prepared in accordance with the California Environmental Quality Act (CEQA), which was approved at the Harbor Board meeting on March 7, 2013.

Pursuant to Charter Section 607, "Limitations on Franchises, Concessions, Permits, Licenses and Leases," Mayor and Council approval is required for the term of a permit or lease agreement that exceeds 30 years and is determined to be in the best interest of the City. The City Attorney has approved proposed Order 13-7125, which includes the SPAA and Permit No. 901 as to form.

BACKGROUND

There has been a steady increase during the past several decades in containerized shipping through ports in the West Coast because of the United States trade with Pacific Rim nations. As ports continue to grow, they have had to improve and expand their infrastructure and operations to accommodate a steady increase of ships, trucks and railroads related to goods movement and cargo containers. In August 2004, the Port adopted an Intermodal Rail Policy and developed subsequent plans and projects for on-dock and near-dock intermodal facilities for shippers, carriers, terminal operators and railroads. Intermodal is defined as transporting cargo by more than one means (e.g., trucks and rail). The SCIG Project involves constructing and operating an intermodal rail yard that would transfer containerized cargo between trucks and railcars. In 2005, the Port selected BNSF to pursue the development of a near-dock intermodal railway facility (SCIG). After extensive discussions, the Port and BNSF conducted an Environmental Impact Study, prepared the EIR, and is requesting to develop and construct the SCIG approximately four miles from the POLA. According to the Port, the proposed SCIG will increase the overall efficiency and competitiveness of its rail-based goods movement business, reduce truck traffic on regional roadways and provide intermodal rail facilities consistent with regional air quality, transportation resources and goods movement agencies.

BNSF Railway Company

BNSF Railway Company is based in Fort Worth, Texas, and operates one of the largest railroad networks in North America. The BNSF Railway is the second-largest freight railroad network in North America, second to the Union Pacific Railroad. A wholly-owned subsidiary of Burlington Northern Santa Fe, the company provides freight transportation over a network of about 32,000 miles of track across two-thirds of the western US and two provinces in Canada. About 23,000 miles of that track are company owned, while the remainder is owned and permitted by other railroads. BNSF owns or leases a fleet of about 6,700 locomotives and about 30 intermodal facilities that help to transport agricultural, consumer, and industrial products. BNSF has a rail yard, near downtown Los Angeles, called the Hobart facility that requires the trucks to drive approximately 24 miles outside of the Port.

PROJECT DESCRIPTION

The proposed SCIG Project will be located approximately four miles north of the POLA and Port of Long Beach (POLB) on land owned primarily by the POLA, but also nearby on non-POLA owned land. SCIG will enable cargo containers to be loaded onto rail cars four miles from docks at the POLA and POLB, instead of being transported 24 miles on local roads and the 710 Freeway to the Hobart facility. The SCIG Project would provide an additional near-dock intermodal rail facility at the POLA to meet the current and anticipated demands and future growth in containerized cargo from the various marine terminals of San Pedro Bay ports. The proposed SCIG is located near the Wilmington community and the cities of Carson and Long Beach. The BNSF and Port intend to meet the goals and objectives of federal, state, and local planning procedures related to goods movement.

The SCIG Project will reduce truck miles associated with moving containerized cargo by providing a near-dock intermodal facility that would also increase the use of the Alameda Corridor and the direct transfer of cargo from port to rail with minimal surface transportation, congestion and delays. The

Alameda Corridor is a 20 mile freight railway owned by the Alameda Corridor Transportation Authority (ACTA), used for transporting cargo from the San Pedro Bay ports to destinations both in and out of the region. The ACTA was implemented to accommodate the projected flow of train traffic from the existing rail yard to connect and handle the railways and trains for POLA and POLB.

AGREEMENT AND PERMIT

Site Preparation and Access Agreement (SPAA)

The SPAA functions will take place on the property in advance of the proposed operations and maintenance of the SCIG. The proposed contract term of the SPAA is for five years, with two one-year options, for a total of seven years. The Port states that the legal rights for the Permit will go into effect upon the completed contractual obligations for the SPAA, unless by mutual consent of BNSF and the Port Executive Director. The proposed rental compensation during the term of the SPAA is approximately \$6,266,106 per year. The Port states that the SPAA option could be extended up to 12 years, due to administrative proceedings or litigation, or by mutual consent of the BNSF and Port.

The Port states that the general area near the SCIG Project is currently occupied by businesses, some port-related, under existing leases with the Port and other property owners. Under the SPAA, implementation of the proposed SCIG Project may result in the termination or the non-renewal of selected tenants' leases and the relocation of tenants to other nearby sites. For non-Port owned property, BNSF would be required to acquire and negotiate removal or relocation of any other existing businesses. The proposed SPAA activities will include the following:

- Determine the acceptable environmental remediation levels for the site;
- Notify current tenants of BNSF's proposed control of POLA land and their need to execute a right of access and use and other real estate matters upon completing their current contracts;
- Notify tenants of right-of-way (ROW) provisions and need to relocate pursuant to existing contracts and provide assistance to ROW holders for any remediation and relocation;
- Provide the SCIG development, site preparation and other project construction activities; and
- Continue SPAA related activities until the completion of the SCIG, per contract provisions.

Permit No. 901

The length of the proposed 50-Year lease agreement could be less if the term of the SPAA exceeds the proposed five years. In any event, the Permit for the POLA property is projected to be 50 years, minus the active contract time for the SPAA. The Port states that the contract terms for the SPAA and SCIG will not cumulatively exceed the maximum of 50 years.

The Permit authorizes BNSF, as the tenant for the proposed SCIG Project site, to legally lease, occupy, operate and maintain the site for the new ICTF near-dock rail yard facility. BNSF will provide a \$500 million private investment to assist in the planning, development and construction of the SCIG Project. The proposed SCIG Project will be constructed and operated by BNSF on a 185-acre site approximately four miles north of the POLA and approximately 102.75 acres would be Port-leased land to BNSF and 82 acres of land that is non-POLA owned property. BNSF would need to acquire the public or privately owned land directly from those owners.

The Port's lease compensation for the first five years of the Permit is \$7,832,633 per year with periodic adjustments every five years. The proposed SCIG operation will enable containers to be loaded onto rail cars four miles from docks at the POLA and POLB, instead of being transported 24 miles on local roads and a freeway to rail facilities. See the Attachment for a map of the site area.

The SCIG facility is scheduled to reach full operational capacity several years after its planned opening in 2016. The facility is scheduled to operate 24 hours a day (three labor shifts) and seven days per week. The BNSF will contract with various trucking companies for transporting containers between the SCIG rail yard and the ports. According to the Port, the contracts between BNSF and the various trucking companies would specify that all trucks be powered by engines that comply with the Clean Air Action Plan's (CAAP) environmental requirements for the Clean Truck Program (CTP).

Overview of Environmental Impact Report (EIR)

On March 7, 2013, the Board of Harbor Commissioners (Board) certified the final EIR under the California Environmental Quality Act (CEQA) for the SCIG Project to be constructed and operated by BNSF on the designated property, and approved the SCIG Project. The Port states that the final EIR identified major findings and conclusions, including a discussion of areas of environmental concerns, alternatives, and feasible mitigation measures, monitoring and reporting. The Port had previously released the draft EIR and the recirculated draft EIR for public review and comments. The Port staff received and reviewed written and oral comments, which they responded to in writing. The Port states that many of the areas of controversy concerning the SCIG were identified through the environmental review process from oral (public meetings) and written comments. In the final EIR Report for the SCIG Project to the Harbor Board, Port staff included the following areas of controversy: air quality; public health; the public's desire for cargo to enter and leave the property of the ports mostly by on-dock rail yards; impact of railroad facilities and operations on neighboring communities (including noise, air emissions, and traffic congestion); diesel trucks; train transport of cargo; potential hazards from truck and rail operations; and movement of cargo in the larger transportation network of Southern California (i.e., Interstate-710 Freeway).

In addition, as stated by the Port, there were concerns from select members of the public about the potential disposition of existing businesses and job loss and the mitigation measures to resolve issues associated with SCIG and BNSF. The existing site includes heavy industry, goods handling facilities and port-related commercial uses consisting of warehousing operations, trucking, cargo operations, container and truck maintenance, servicing and storage, and rail service. The area includes single-family residential areas, schools, support housing complexes, a medical center commercial businesses and light industrial facilities. On March 21, 2013, the Board approved the Permit and Site Preparation and Access Agreement (SPAA) with BNSF for the SCIG Project. The Permit and SPAA incorporate the final EIR's Mitigation and Monitoring Reporting Program, which requires Port staff to track and enforce environmental controls through a combination of project conditions, mitigation measures and lease requirements identified in the final EIR.

The Office of the City Attorney advises that the CEQA Appeals of the EIR for the SCIG will be addressed by the City Council prior to Council consideration of the proposed SPAA and Permit No. 901 with BNSF Railway Company (See Discussion also).

Employment and Economic Benefits for the SCIG Project

The SCIG is expected to produce approximately 1,500 direct and indirect jobs per year over a three-year construction period and between 660 to 1096 permanent (long-term) jobs for the operation of the Project at full capacity (estimated by 2035). The Port states that the SCIG project will provide competitive wages and salaries during the SPAA and SCIG project. This will include a preference to hire local residents for new jobs and workforce training programs, in partnership with local institutions, to help them qualify for those jobs. According to the Port, BNSF plans to enter into a project labor agreement with the Los Angeles/Orange County Building and Construction Trades Council to assist in the construction of the SCIG. In addition, the Port states that the project is expected to contribute as much as \$31 million in federal, state and local taxes during the construction phase and as much as \$48 million in tax revenue during the operational phase of the SCIG. The Port states that it is not anticipated that any of the current jobs with tenant companies will be permanently lost by the implementation of the SCIG Project.

POLA and SCIG Finances

BNSF will pay rent to the Port for use of the land for SCIG every month. The rent will be subject to annual adjustments based on the Consumer Price Index (CPI). Currently, the CPI is estimated at two-percent per year. The Los Angeles City Charter Section 607(b) requires that the lease (or rent) include a procedure to adjust compensation up to every five years. This adjustment will incorporate the applicable market rental rates, negotiation and mutual agreement between BNSF and the Port.

The POLA has a policy of requiring a 10 percent Rate of Return (ROR) on its land use holdings. The Port states that the proposed rental compensation during the term of the SPAA is approximately \$6,266,106 per year. The SPAA rental fee of \$6,266,106 is reflective of the ROR policy or a monthly rent amount of about \$522,176, which is reflective of \$1.40 per square foot, based on the land value (during construction) of \$14 per square foot for the property. BNSF will pay an amount of \$7,832,633 per year for Permit No. 901 for the SCIG Project or a monthly rent amount of \$652,719, which is reflective of \$1.75 per square foot, based on the operational land value of \$17.50 per square foot.

The Port states that it will provide a credit of \$12.6 million to BNSF for site preparation, clearing of encumbrances and readying the site for development. Since the Port is not delivering a site ready for project development, BNSF is willing to develop the site in exchange for a direct credit from the Port. According to the Port, this arrangement will improve the efficiency, development and work schedule to complete the project. BNSF will still be responsible to pay rent to the POLA during this period.

The BNSF will incur \$500 million in development, operation, and maintenance costs for the SPAA and SCIG. The Port will not be responsible to fund any improvements, but will be required to lease approximately 102.75 acres of land. The Port will provide an investment and credit of approximately \$29 million:

<u>Amount</u>	<u>Items for Port Investment and Costs</u>
\$ 3,200,000	EIR costs
\$ 7,200,000	Potential relocation costs of the ACTA maintenance facility
\$12,600,000	Pre-development credits for BNSF
\$ 6,000,000	Conducting initial environmental remediation
\$29,000,000	Total Cost

Subsequent to the SPAA completion, all ongoing operating and maintenance costs associated with the property for the SCIG facility will be fully assumed by BNSF. The Port expects to receive a revenue rate of return for the 50-year lease term for the Permit to be between a low of 9.8 percent to a high of 10.5 percent or an estimated ROR between \$755,430,634 (9.8%) and \$792,376,429 (10.5%). Ongoing operating and maintenance costs associated with the SCIG will be fully assumed by BNSF during the term of the proposed SCIG Permit.

RECOMMENDATION

That the Council, in accordance with Charter Section 607, make a finding that the proposed Permit No. 901 is in the best interest of the City and, by a two-thirds vote, subject to Mayoral veto, or three-fourths vote over the veto of the Mayor, approve, subject to City Attorney approval, the Harbor Department (Port) Board of Harbor Commissioners Order No. 13-7125 to authorize the Site Preparation and Access Agreement and proposed 50-year lease Permit No. 901 with the Burlington Northern Santa Fe (BNSF) Railway Company for the development, construction, operation and maintenance of a near-dock Intermodal Railway Container Transfer Facility, to be called Southern California International Gateway Facility, on approximately 102.75 acres of land on Port property.

FISCAL IMPACT STATEMENT

The BNSF will invest approximately \$500 million to develop, operate, and maintain a near-dock Intermodal Railway Container Transfer Facility. The Port will be required to lease approximately 102.75 acres of land. The POLA has a policy of requiring a 10 percent rental Rate of Return on its land use holdings. The rental compensation will be subject to annual adjustments based on the Consumer Price Index. The Port will contribute approximately \$29 million for EIR costs, which includes the potential relocation of the ACTA maintenance facility, developmental credit to BNSF and initial environmental remediation. Over the life of the contract, the Port expects a revenue rate of return for the 50-year lease term between a low of 9.8 percent to a high of 10.5 percent, which translates to an estimated amount between \$755,430,634 and \$792,376,429. Any ongoing operating and maintenance costs associated with the SCIG will be fully assumed by BNSF during the term of the proposed SCIG Permit. Any funds will be deposited into the Harbor Revenue Fund. There is no impact to the City General Fund.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 607, "Limitations on Franchises, Concessions, Permits, Licenses and Leases," Mayor and Council approval is required for the term of a permit or lease agreement that exceeds 30 years and is determined to be in the best interest of the City. Council may, by a two-thirds vote, subject to Mayoral veto, or three-fourths vote over the veto of the Mayor, authorize a term up to 50 years or according to federal and state law.

(Discussion attached)

DISCUSSION

Overview

POLA comprises 7,500 acres of land along 43 miles of waterfront. The POLA operation contains 24 passenger and cargo terminals, which is the largest in North America in terms of container volume and cargo value. The Port is estimated to generate more than 830,000 regional jobs and \$35 million in annual wages and tax revenues. The POLA is the number one container port in the United States. The POLA believes that the competitive landscape will change, with the completion of the Panama Canal, anticipated in 2015, and the growth of the ports in Canada, Mexico and on the East Coast. The proposed SCIG intermodal rail facility will provide additional competitive options for the overall growth and expansion of the POLA by providing additional resources and improving infrastructure for its tenant shippers and port customers.

The Port states that its intent is to promote increased use of rail in general and near-dock rail facilities in particular, as indicated in its Rail Policy. The Port's goal is to improve its operational capacity and create greater efficiency in moving cargo to and from its docks. Otherwise, the Port could lose a competitive edge in the global marketplace due to extended delays in loading and unloading cargo from vessels doing business at the Port. There will be an increase in container movements due to the increase of efficiencies and operational resources resulting from the proposed rail yard with the proposed intermodal rail yard facility and capital improvement infrastructure projects. The proposed railway improvements will be able to accommodate the port's growth while reducing energy consumption, highway congestion and environmental emissions.

Intermodal Container Transfer Facility (ICTF)

The basic concept for an intermodal container transfer facility (ICTF) is the movement of marine cargo containers using different modes of transportation for freight (such as rail, ship, and truck), without any handling of the freight itself when changing modes. Modern trains represent an essential link in the intermodal transportation and delivery of transcontinental freight loaded into marine cargo containers. The intermodal cargo is transferred to and from the rail system through on-dock, off-dock and near-dock rail yards. Near-dock rail is defined as a rail yard located outside of the marine terminals but within five miles of the Port. The cargo container capacity is often expressed in twenty-foot equivalent units (or TEUs) and forty-foot equivalent units (FEUs) and is a standardized reusable steel box used for the safe, efficient and secure storage and movement of materials and products within an intermodal freight system.

The proposed SCIG intermodal rail yard facility is a rail infrastructure project that will increase the efficiency and competitiveness of containerized cargo movement through the POLA and other local, regional, and national markets. The SCIG is expected to further enhance the transcontinental train service and the movement of marine cargo containers. The proposed SCIG Project is planned to improve the efficiency and competitiveness of cargo container movements through the POLA and POLB complexes to local, national and international markets. In addition to the SCIG Project, Union Pacific Railroad Company also operates an ICTF at the Port. The SCIG Project will include the following components:

- Manage the current and future growth in containerized cargo at the San Pedro Bay;
- Provide sufficient near-dock intermodal rail facilities to port terminals;
- Reduce the distances and number of long truck trips due to increases in container cargo;
- Re-route container trucks from the current primary local truck routes to the Hobart Rail Yard in City of Commerce to local truck routes between San Pedro Bay port facilities and SCIG;
- Minimize emissions, by diverting cargo from truck to rail transport and using clean technology;
- Provide closer proximity to all the container terminals of both ports;
- Improve cargo container movements and productivity via train and rail;
- Increase higher train volume to multiple destinations inside and outside the State; and
- Allow a rail yard facility closer to storage yards to handle a greater number of rail cars;

Site Preparation and Access Agreement (SPAA)

The Port states that the contract term of the SPAA is in the development phase and is projected for five years with two, one-year renewal options or up to seven years. According to the Port, the SPAA will remain in effect until the SCIG has been completed. Although the contract term for SPAA is for an initial period up to seven years, it could be extended 12 years, if there is a stoppage or delays during the administrative, development and work stages of the Project, as follows: EIR appeals, litigation of the EIR; regulatory issues stopping BNSF site work; and delays in obtaining property rights to plan and construct the SCIG within the time limit stipulated for the project. The term of the Permit would then be reduced commensurately, so as not to exceed the 50-year contract term.

SCIG intermodal rail yard facility

The main objectives of the proposed SPAA and SCIG is to allow BNSF to use POLA property to develop, prepare, construct and perform functions related to implement an additional near-dock ICTF and to improve and maintain the environmental standards at the POLA. During the proposed term of the SPAA, BNSF will identify and develop the land parcels and prepare the land for construction of the SCIG Project. The construction of the SCIG is expected to take up to five years. The proposed compensation during the term of the SPAA is approximately \$6,266,106 per year and the compensation during the first five years for Permit No. 901 for the SCIG is \$7,832,633 per year. The Port states that the SPAA may take more time than expected if there are any unanticipated delays during the development and construction process.

The SCIG Project will enable containers to be loaded onto rail cars four miles from docks at the POLA and POLB, instead of being transported 24 miles for loading, as they are now, on local roads and the Long Beach (710) Freeway to BNSF's Hobart Rail Yard near downtown Los Angeles in the City of Commerce. The intent of this method is to reduce cargo damage and loss, costs by using fewer trucks to carry cargo, reduce truck traffic, freeway congestion and air pollution by eliminating approximately 3,700 per day and approximately 1.3 million truck trips per year by 2035. Other key benefits with intermodal transport would be to improve safety and security and allow cargo freight to be transported faster. The Port also expects that more containers will travel by train through the Alameda Corridor each year and plans to expand future intermodal needs. The Port states that the new intermodal rail yard facility is expected to maintain and improve its competitive advantage in the domestic and international market.

The Port states that BNSF will seek to minimize the environmental impact of the SCIG Project by reducing emissions, both by diverting cargo from truck to rail transport, and using clean technology that will reduce potential air pollution. BNSF states that the railway yard facility would create a new environmental model for the railway system and, as a result, reduce truck traffic, noise, and air pollutant emissions from trucks along the heavily travelled Long Beach Freeway and corridor. The proposed SCIG also would develop programs to better serve cargo carriers and terminal operators. For example, BNSF has pledged to clean up the existing industrial site and to install all-electric cranes and low-emission locomotives and equipment. The Port states that BNSF has committed to consider and implement new zero-emission technologies after they have determined that it has become technically, operationally, and commercially feasible.

The Port anticipates that SCIG will be one of the cleanest rail facilities in the country once it is fully operational. The project is expected not only to improve the existing industrial site, but also air quality and reduce congestion and health risks for surrounding communities. In order to fulfill the EIR requirements, the SCIG states that it will use the cleanest technology available such as electric cranes, LNG equipment, LEED-certified buildings, newer trucks that are in compliance with CAAP. These environmental mitigation measures are part of the EIR provisions in the Permit. In addition, the SCIG Project will include the following environmental and operational features:

- Electric-powered rail mounted “gantry” cranes and low-emission yard equipment to handle cargo. (A “gantry” crane supports groups of railway signals over several tracks.);
- Liquid Natural Gas (LNG-fueled or equivalent) cargo-handling equipment;
- Plug-in (as opposed to diesel-powered) refrigeration units while on site;
- Leadership in Energy & Environmental Design (LEED) Buildings. This is a rating system for design, construction and operation of high performance “green” buildings;
- Reduce the truck traffic on local roads used for transport of cargo containers;
- Work with POLA and POLB to advance green and zero emission technologies;
- Trucks serving SCIG must meet or exceed San Pedro Bay Ports Clean Air Action Plan (CAAP) requirements for on-road low-emission standards;
- Phase in the latest locomotives, as the equipment become available;
- BNSF would match Port contributions up to \$3 million to advance the commercial development of zero emissions technologies to eliminate air pollution from port operations;
- Track and enforce environmental controls through project conditions, mitigation measures and lease requirements identified in the final EIR and proposed 50-year lease agreement;
- Develop landscaping and construct a wall around parts of the SCIG facility;
- Commit to voluntary emissions reductions related to line haul locomotives calling at SCIG;
- Evaluate and implement new technologies as feasible throughout the term of the lease

The Port’s 50-year Permit with BNSF incorporates mitigation, monitoring and reporting provisions in the final EIR and SCIG Project. The Port believes that conditions for the SCIG Project are consistent with regional, state and federal transportation and air quality plans, objectives and provisions. The SCIG Project will allow the Port to meet its legal mandates to accommodate the growing international commerce, while reducing Port air emissions, and provide jobs to the local economy. The Board determined that the benefits of the SCIG Project outweigh the unavoidable environmental effects.

Other Selective Project Benefits

The Port states that the SCIG Project will provide an additional near-dock intermodal rail facility to serve the expanding container business at the San Pedro Bay Ports. The benefit of rail transport is that trains are considered more fuel efficient than trucks handling equivalent loads and can move as much as one ton of freight about 500 miles on one gallon of diesel fuel and one double stack intermodal train can take 280 or more trucks off the highways. BNSF Railway's private investment of more than \$500 million will include \$100 million in green technologies and zero-emission container movement technologies. The SCIG Project also will contribute to the reduction of truck traffic, traffic congestion and air pollution through what is supposed to be a projected state of the art near-dock rail transfer facility. The Port estimates that the project will eliminate approximately 3,750 one-way truck trips per day (by 2035) and up to 1.3 million truck trips annually along the 24-mile stretch of the 710 Freeway from the POLA to BNSF's Hobart Yard near downtown Los Angeles. The SCIG Project could accommodate as many as 570,800 TEUs in the first year of operations and, once it is at full operational capacity, accommodate as many as 2.8 million TEUs by 2035 calendar year.

Land Use Issues

The POLA has jurisdiction of the SCIG Project because it is primarily on Port property. As stated, BNSF proposes to construct and operate the SCIG Project on a 185-acre site approximately four miles north of the POLA. The Port is planning to lease 102.75 acres of land to BNSF and to lease the other 82 acres of land from non-POLA property in the nearby cities of Carson and Long Beach. If BNSF plans to lease or purchase the 82 acres or additional land to occupy or to relocate existing businesses, BNSF will be responsible to negotiate for the land use from the public or private-owners of the property. Some of the Port-owned property currently earmarked for the SCIG project area is occupied by private businesses under existing and expiring leases under "holdover" tenant leases (month-to-month leases). The tenant leases would necessitate termination, non-renewal or, with some tenants, the offer of moving or relocating to nearby alternative sites.

In accordance with the Permit, a maximum of 10 percent of the leased land-use property may be added or deleted by mutual written consent of the Port Executive Director and BNSF. However, both parties have agreed that BNSF can purchase land separate and independent of Port-leased land. The land may be adjacent private property in the cities of Los Angeles, Carson, and Long Beach. The Port is under no obligation to purchase the land for or on behalf of BNSF. According to the Port, BNSF plans to identify and develop additional land for the SCIG. BNSF will retain ownership of any property that they purchase that is not on Port-owned lands. However, the Port states that it will have the right of first refusal for other properties BNSF has acquired at the end of the Permit term. The Port states that it has no plans other than the rail yard facility for the land during the proposed 50 year lease to BNSF. The Port states the existing site includes warehouse structures, goods handling facilities and other commercial use activities in the Port's EIR. BNSF will not be able to transfer, mortgage, grant and authorize the use of Port property to any third party without the prior written consent of the POLA and City officials. BNSF also agrees to indemnify and protect the City and POLA from any claims, demands, actions, liens, costs, judgments, damages or loss of Port property and revenue under the provisions of the contract permit.

Overview of Appeals to the final EIR for the SCIG Project

The Port states that the City Clerk received seven CEQA appeal letters regarding the final EIR, which will be considered in a separate City Council action(s) under Council Files 13-0295 (City of Long Beach), 13-0295-S1 (Coalition for Clean Air, East Yard Communities for Environmental Justice, Natural Resources Defense Council), 13-0295-S2 (Fast Lane Transportation #1), 13-0295-S3 (Coalition for a Safe Environment), 13-0295-S4 (Fast Lane Transportation #2), 13-0295-S5 (Long Beach Unified School District), 13-0295-S6 (South Coast Air Quality Management District), 13-0295-S7 (Harbor Department Appeal Responses) and 13-0295-S8 (California Cartage, Three Rivers Trucking, Los Angeles Harbor Grain, San Pedro Forklift). According to the Port, the details regarding the various claims made under the seven appeals and the Harbor Department's response to each are set forth in the above-referenced Council files. The issues of concern in the appeals are similar to the issues raised in the EIR public process, and include project siting near neighborhoods and environmental justice, air quality and health risk, feasibility of mitigation measures and project conditions, new technology for zero emission trucks and cleaner locomotives, alternatives to the project, noise, and displaced businesses. The Port stated in its Staff Report on CEQA Appeals dated April 18, 2013 that the Port staff reviewed and responded in writing to all the oral and written comments and that the appeals failed to suggest any evidence that would reasonably support any contrary conclusion adopted by the Harbor Board.

City Council will be requested to make separate findings and make decisions regarding these seven CEQA appeals of the Board's EIR certification in a separate City Council action under the above-referenced City Council CEQA appeal files. The City Council proposed action would be to either to deny all of the appeals and certify the SCIG final EIR or to grant any or all of the appeals and remand the EIR back to the Board for reconsideration of the EIR. If the City Council denies the appeals and certifies the SCIG final EIR, then the City Council may rely on the certified final EIR for its consideration of the Council action to approve the Permit and SPAA. If the City Council grants the appeals and remands the EIR back to the Harbor Department for reconsideration, then it may not take action to approve the Permit and SPAA until after a further action is taken to certify a final EIR upon which the City Council may rely for its CEQA determination required of all discretionary actions.

Compliance with City Requirements

On March 7, 2013, the Board certified the final EIR under the CEQA for the SCIG Project to be constructed and operated by BNSF on the designated property, and approved the SCIG Project. The Port states that no further review under CEQA is required for approval and all feasible mitigation and lease measures and project conditions are incorporated in the proposed SPAA and Permit. BNSF is required to comply with all City Ordinances and provisions, including the Service Contractor Worker Retention and/or Living Wage Ordinances, Equal Benefits Policy, the Affirmative Action Program, and the Contractor Responsibility for applicable laws affecting the leased property. Since proposed Order No. 13-7125 is a property lease, the request by the Port is not subject to the Charter Section 1022 provisions pertaining to the use of independent contracts.

Charter Section 607 requires that for a lease agreement in excess of 30 years, Council must make a finding that it is in the best interest of the City. Council may by a two-thirds vote, subject to Mayoral veto, or three-fourths vote over the veto of the Mayor authorize a term up to 50 years, or the maximum period allowed by any federal or state law, whichever is less. The City Attorney must approve the SPAA and Permit leases as to form.

Attachment

MAS:ABN:10130132

1 Figure 2-4. SCIG Designated Truck Routes.

