ADMINISTRATIVE EXEMPTION and TRADE, TRAVEL, AND TOURISM COMMITTEE REPORT relative to setting aside Council action approving the Site Preparation and Access Agreement and Permit with the BNSF Railway Company for the construction, operation and maintenance of the Southern California International Gateway (SCIG) facility.

Recommendations for Council action:

1. ADOPT the determination by the Board of Harbor Commissioners that the proposed action is administratively exempt under the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(b)(f) and (h) of the Los Angeles City CEQA Guidelines.

2. SET ASIDE COUNCIL ACTION, RESOLUTIONS and ORDERS, pursuant to the order of the court in the case Fast Lane Transportation, Inc., et al. v. City of Los Angeles, et al., Contra Costa Superior Court Case No. CIVMSN 14-0300 (consolidated cases), relative to Council 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 the May 8, 2013 Council Motion Nos. 10-A, 10-B (as amended), 10-D and 10-E under Council File No. 13-0398, pursuant to Board of Harbor Commissioners Resolution No. 18-8334 and Order No. 18-7243.

Fiscal Impact Statement: The Board of Harbor Commissioners reports that this action will not impact the General Fund.

Community Impact Statement: None submitted.

SUMMARY

In a report to the Board of Harbor Commissioners dated July 26, 2018, the Port of Los Angeles (POLA) recommends that the Board set aside the approval of the Site Preparation and Access Agreement and Permit No. 901 with BNSF Railway Company for the SCIG project pursuant to Court Order mandating the City set aside specified actions, resolutions, and orders including the SCIG Project Final Environmental Impact Report (FEIR) certification and approvals predicated on the certified FEIR. POLA reports that a separate companion Board Order sets aside the FEIR certification, SCIG project approval and related environmental approvals, and directs POLA to suspend any and all SCIG Project activities until such time as the City and BNSF have taken the actions necessary to bring the determinations, findings and decisions into compliance with CEQA.

POLA reports that SCIG 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 and connected to the Alameda Corridor. Council approved the Order and Permit on May 8, 2013. Seven lawsuits challenging the SCIG Project FEIR pursuant to CEQA were filed in June, 2013, in California state court against the City of Los Angeles and real party in interest BNSF. 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.

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 trial court's order mandates that Council, on behalf of the City, set aside 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 Council Motions 10-A, 10-B (as amended), 10-D and 10-E under Council File No. 13-0398. Additionally, the Court ordered the City to 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; and, the approval of related EIR findings (CF 13-0295-S9).

On August 23, 2018, the Board approved POLA's request to recommend that Council set aside its May 8, 2013, approval of the Order and Permit for the SCIG project.
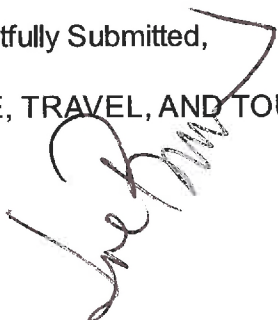
At its meeting held September 4, 2018, the Trade, Travel, and Tourism Committee discussed this matter with POLA staff and a representative of the City Attorney. POLA staff reviewed the history of the project and the outcome of the lawsuits filed against the City. The Court determined that all SCIG project activity be suspended until the FEIR issues can be resolved. The City Attorney representative stated it will take approximately six to eight months to prepare and circulate for public comment the revised portions of the EIR. In the interim, the three sub-tenants at the project site will enter month-to-month agreements with POLA to continue their operations at the Port.

During the public comment period, warehouse workers and employee advocates urged the Committee to take action to improve working conditions for employees of Cal Cartage. Speakers expressed concerns regarding wage theft, racial discrimination, unsafe conditions, and violations of the State Labor Code.

Staff stated that only the Court Order regarding the set aside of the approval of SCIG was before the Committee for consideration at this time. The Trade, Travel, and Tourism Committee recommended that Council set aside its previous actions to approve the Site Preparation and Access Agreement and Permit with the BNSF for the construction, operation and maintenance of the SCIG facility, pursuant to Court Order, and as recommended by the Board of Harbor Commissioners.

Respectfully Submitted,

TRADE, TRAVEL, AND TOURISM COMMITTEE

MEMBER	VOTE
BUSCAINO:	YES
BONIN:	YES
KREKORIAN:	YES

jaw

-NOT OFFICIAL UNTIL COUNCIL ACTS-