



Executive Director's

Report to the

Board of Harbor Commissioners

DATE: APRIL 6, 2016

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - PROPOSED REVOCABLE PERMIT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND SAN PEDRO FORKLIFT INC.

SUMMARY:

The proposed action will grant a Revocable Permit (RP) to San Pedro Forklift (SP Forklift) for property formerly covered by Revocable Permit (RP) No. 99-07 issued by the City of Los Angeles Harbor Department (Harbor Department). Because of the location within the footprint of the BNSF Railway Co. (BNSF) Southern California International Gateway (SCIG) project, this Harbor Department-issued entitlement was terminated in November of 2013 and replaced by a license agreement issued by BNSF covering the same footprint and uses, to provide SP Forklift continuing occupancy pending development of the SCIG Project. BNSF's development of the SCIG project site pursuant to a Site Preparation and Access Agreement (SPAA) was voided by the recent court ruling in the *Fast Lane Transportation et al. v. City of Los Angeles et al.* litigation (SCIG Litigation) case, which also voided the license agreement issued to SP Forklift by BNSF, thus necessitating issuance of the recommended RP in order to provide lawful occupancy of the property by SP Forklift.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Class 1(14) of the Los Angeles City CEQA Guidelines;
2. Approve the proposed Revocable Permit with San Pedro Forklift Inc.;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Revocable Permit; and
4. Adopt Resolution No. _____.

DISCUSSION:

Background/Context - The Harbor Department issued RP No. 99-07 to SP Forklift in 1999 to operate a transloading yard facility on Harbor Department lands. Because of the location within the footprint of the BNSF SCIG project this entitlement was terminated by the Harbor Department in November of 2013 and was replaced by a license agreement issued by BNSF, which covered the same footprint and uses as RP

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No. 99-07. This allowed SP Forklift to continue its operations uninterrupted even with the commencement of the development process for the SCIG project.

Various parties including SP Forklift filed litigation captioned SCIG Litigation to challenge, among other things, the certification of the SCIG EIR and approval of the SCIG project, SPAA and Permit. The court presiding over the SCIG Litigation issued a ruling on March 30, 2016 which, among other things, voided the SPAA. The voiding of the SPAA consequently voided the license agreement issued to SP Forklift by BNSF, resulting in a situation in which SP Forklift is using and occupying Harbor Department premises technically as a trespasser, without a valid lease document requiring it to pay rent, provide indemnity or insurance naming the Harbor Department as insured, and other typical protections afforded the Harbor Department from its tenants.

The purpose of the recommended Revocable Permit is to provide a lawful basis for SP Forklift to continue its occupancy of Harbor Department property consistent with its past approved uses as litigation proceeds, rather than evict it as a result of the trespass situation created by the recent court ruling. The terms of the RP mirror those of BNSF's license agreement, with the intent of minimizing the commercial prejudice on SP Forklift as a result of the SCIG Litigation, notwithstanding its status as a party to that litigation.

Summary of Significant Permit Terms

Effective Date: The month-to-month RP (Transmittal 1) will be effective March 30, 2016, upon execution by the Executive Director and revocable upon thirty (30) days' notice.

Premises: The permit premises mirrors the premises that was existing at the time of the Court Order with their agreement with BNSF. There have not been any changes to the SP Forklift premises as they existed in 2013 when the Harbor Department entered into the SPAA and Permit with BNSF.

Compensation: Compensation will be as follows:

REVOCABLE PERMIT COMPENSATION	
TENANT	MONTHLY RENT
SAN PEDRO FORKLIFT INC.	\$ 12,548.00

Permitted Uses: The permitted uses under the recommended Revocable Permit are identical to those entitled by RP No. 99-07, and BNSF's license agreement, with no change in or expansion of use.

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The proposed RP is being issued to SP Forklift in order to continue the same activities and uses on the same property as has been covered under previous Harbor Department RP No. 99-07, and successor license agreement from BNSF. While this property was the subject of other proposed uses as analyzed in the SCIG Project Environmental Impact Report (EIR), the SCIG EIR and project were voided in the SCIG Litigation court case and are not applicable here as no part of the SCIG Project is proposed to be applied in this revocable permit. The proposed revocable permit is not a new project, and is the issuance of a new permit on existing land and structures and continued activities. As such, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The RP will produce additional revenue of \$12,548.00 per month.

CITY ATTORNEY:

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

TRANSMITTAL:**1. Revocable Permit**


JACK C. HEDGE
Director of Cargo Industrial Real Estate

APPROVED:


FOR EUGENE D. SEROKA
Executive Director

JH:PA:raw
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BL583raw SP Forklift SCIG RP

FIS Approval:  (Initials)
CA Approval:  (Initials)


MICHAEL DiBERNARDO
Deputy Executive Director