



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 CALIFORNIA CARTAGE COMPANY**

SUMMARY:

The proposed action will grant a Revocable Permit (RP) to California Cartage Company (Cal Cartage) for property formerly covered by Agreement No. 2069 and Revocable Permit (RP) No. 95-40 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, these Harbor Department-issued entitlements were terminated in May of 2013 and replaced by license agreements issued by BNSF covering the same footprint and uses, to provide Cal Cartage 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 agreements issued to Cal Cartage by BNSF, thus necessitating issuance of the recommended RP in order to provide lawful occupancy of the property by Cal Cartage.

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 California Cartage Company;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Revocable Permit; and
4. Adopt Resolution No. _____.

SUBJECT: REVOCABLE PERMIT WITH CALIFORNIA CARTAGE CO.**DISCUSSION:**

Background/Context - The Harbor Department issued RP No. 95-40 and Agreement No. 2069 to Cal Cartage in 1995 and 1998, respectively, to operate a parking lot and container freight station/warehouse facility on Harbor Department lands. Because of the location within the footprint of the BNSF SCIG project these entitlements were terminated by the Harbor Department in May of 2013 and were replaced by license agreements issued by BNSF, which covered the same footprint and uses as Agreement No. 2069 and Revocable Permit No. 95-40. This allowed Cal Cartage to continue its operations uninterrupted even with the commencement of the development process for the SCIG project.

Various parties including Cal Cartage 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 agreements issued to Cal Cartage by BNSF, resulting in a situation in which Cal Cartage 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 Cal Cartage 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 agreements, with the intent of minimizing the commercial prejudice on Cal Cartage 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 same premises as Agreement No. 2069 and RP No. RP95-40, and BNSF's license agreement.

Compensation: Compensation will be as follows:

REVOCABLE PERMIT COMPENSATION	
TENANT	MONTHLY RENT
CALIFORNIA CARTAGE CO.	\$ 385,566.40

SUBJECT: REVOCABLE PERMIT WITH CALIFORNIA CARTAGE CO.

Permitted Uses: The permitted uses under the recommended Revocable Permit are identical to those entitled by Agreement No. 2069 and Revocable Permit No. 95-40, and BNSF's license agreement, with no change in or expansion of use.

ENVIRONMENTAL ASSESSMENT:

The proposed RP is being issued to Cal Cartage in order to continue the same activities and uses on the same property as has been covered under previous Harbor Department Agreement No. 2069 and RP No. 95-40, 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 \$385,566.40 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:


EUGENE D. SEROKA
Executive Director

JH:PA:raw
Author: Paul Andre
BL581raw Cal Cartage SCIG RP

FIS Approval:  (Initials)

CA Approval:  (Initials)


MICHAEL DiBERNARDO
Deputy Executive Director