



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 MORTIMER & WALLACE, INC.**

**SUMMARY:**

The proposed action will grant a Revocable Permit (RP) to Mortimer & Wallace, Inc. (M&W) for property formerly covered by Permit No. 752 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 May of 2013 and replaced by a license agreement issued by BNSF covering the same footprint and uses, to provide M&W 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 M&W by BNSF, thus necessitating issuance of the recommended RP in order to provide lawful occupancy of the property by M&W.

**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 Mortimer & Wallace, 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 Permit No. 752 to M&W in 1985 to operate a bulk agricultural processing 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 May of 2013 and was replaced by two license agreements issued by BNSF, which covered the same footprint and uses as Permit No. 752, but also added 7,364 square feet of land to load petroleum coke from trucks. This

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allowed M&W to continue its operations uninterrupted even with the commencement of the development process for the SCIG project.

Various parties including M&W 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 M&W by BNSF, resulting in a situation in which M&W 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 M&W 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 M&W 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 M&W permit premises have been increased 7,364 square feet by BNSF from what they were when the SPAA was executed. M&W uses this additional space to load petroleum coke from trucks into rail cars. The remainder of their premises mirrors what existed prior to the SPAA and the use is the same.

Compensation: Compensation will be as follows:

REVOCABLE PERMIT COMPENSATION	
TENANT	MONTHLY RENT
MORTIMER & WALLACE INC.	\$ 12,652.88

Permitted Uses: The permitted uses under the recommended RP add an additional 7,364 square feet of land for the loading of petroleum coke from trucks and rail cars. Other permitted uses are identical to those entitled by Permit No. 752, and BNSF's license agreement, with no change in or expansion of use.

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**ENVIRONMENTAL ASSESSMENT:**

The proposed RP is being issued to M&W in order to continue the same activities and uses on the same property as has been covered under previous Harbor Department Permit No. 752, 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 \$12,652.88 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

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

  
MICHAEL DiBERNARDO  
Deputy Executive Director

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