



Coalition For A Safe Environment

Press Release

For Immediate Release

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Community Organizations File Environmental Lawsuit Against Port of Los Angeles BNSF SCIG Project

“Community, Environmental and Faith Based Groups Say No More Air Pollution, Noise, Traffic Congestion & Health Problems To The City of Los Angeles”

Los Angeles. The Coalition For A Safe Environment an environmental justice organization, two community organizations Community Dreams, California Kids IAQ and the faith-based Apostolic Faith Center filed a California Environmental Quality Act (CEQA) lawsuit against the City of Los Angeles and Port of Los Angeles Friday opposing the new proposed \$500 million BNSF Railway Company Intermodal Southern California International Gateway (SCIG) Project.

The SCIG Project will allow the Port of Los Angeles to send diesel trucks to the facility four miles away to load container cargo onto BNSF trains to be shipped throughout the region and out of California. The project will handle over 2 million more truck trips a year and over 2,887 more train trips annually.

The SCIG Project will be built in Wilmington but border the cities of Long Beach and Carson. The reason for the lawsuit is that the trucks and trains will be passing through these cities communities adding hundreds of tons of more air pollution each year which will increase public health problems such as asthma, bronchitis, lung cancer, COPD, leukemia and other diseases. In addition, noise will increase day and night, there will be more truck traffic congestion and accidents on local streets and

freeways.

Jesse N. Marquez executive director of the environmental justice organization Coalition For A Safe Environment (CFASE) stated that, "we are tired of being the sacrificial lambs for the ports and large retail chains like Walmart who want to import cheap made products overseas, make higher profits but who do not want invest in clean zero emission electric trucks and trains which do not pollute our air." "Right now the public is stuck with the medical bills and all the suffering while the polluter pays nothing."

CFASE and other organizations had requested during the public hearings that the Port of Los Angeles include new alternative clean technologies and air pollution capture technologies for ships and trains. The Port response is that they will review new technologies every five years. Ricardo Pulido, executive director of Community Dreams, responded by saying, "That is not enough: Our harbor and freight transportation corridor communities have done our homework and have discovered that there are new alternative technologies that can be required now, but the ports and their clients do not want to invest in them now."

One technology that had been proposed was a non-polluting electric MagLev Train manufactured by American MagLev Technologies, Inc. who even offered to build a demonstration project at the port for free and the port refused. The company has even offered to build the manufacturing facility in the LA Harbor area.

Two other innovative technologies rejected by the port were the Advanced Maritime Emission Control System (AMECS) for container ships and the Advanced Locomotive Emission Control System (ALECS) for locomotive train engines which can capture over 90% of the smoke stack polluting exhaust. The diesel fuel emissions have been classified by the State of California as a cancer causing chemical.

Pastor Alfred Carrillo of the Apostolic Faith Center in East Wilmington commented, "My church and congregation is located less than one mile from this new proposed facility, we are already in a major public health crisis now, how can I administer the word of God and speak of hope when my members are sick and dying. The port cannot even tell you by name who in our harbor communities is sick from their business operations."

Environmental and public health organizations had requested the port include a Health Impact Assessment to identify who is sick, how many are ill and from what disease(s) so that the port can adopt appropriate mediation measures to eliminate or reduce the public health impacts and the port stated it was not necessary.

California Kids IAQ director Drew Wood stated that, "our organizations work centers on researching the quality of indoor air in public schools and in establishing a new indoor air quality standard so that our children will be able to breathe clean air at least a few hours a day." He also said that "the port must pay for and provide air purification systems for all cities public schools who are exposed to the Ports, big retail chains and BNSF Railway Company freight transportation air pollution."

The coalition of organizations has also proposed that the BNSF SCIG be built on port property and not near residential communities, public schools and parks. They have identified Pier 500 as the best location for a new rail intermodal facility.

Information provided by Jesse Marquez, May 8, 2011 (Press Release and CFASE Petition)

The community organizations are currently being represented by the law firm Johnson and Sedlack.

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 12 SAFE ENVIRONMENT, APOSTALIC FAITH
 13 CENTER, COMMUNITY DREAMS, AND
 14 CALIFORNIA KIDS, IAQ

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 COUNTY OF LOS ANGELES

17 COALITION FOR A SAFE ENVIRONMENT,) CASE NO.:
 18 a Non-Profit Unincorporated Association;) ASSIGNED FOR ALL PURPOSES TO
 19 APOSTALIC FAITH CENTER, a Non-Profit) JUDGE:
 20 Unincorporated Association;) DEPARTMENT:
 21 COMMUNITY DREAMS, a Non-Profit) ACTION FILED:
 22 Unincorporated Association; and)
 23 CALIFORNIA KIDS IAQ, a Non-Profit)
 24 Unincorporated Association,)

25 Petitioners,) **PETITION FOR WRIT OF MANDATE**

26 vs.)

27 CITY OF LOS ANGELES,) **CASE DESIGNATION: CEQA**
 28 CITY COUNCIL OF CITY OF LOS)
 ANGELES,)
 LOS ANGELES HARBOR DEPARTMENT,)
 PORT OF LOS ANGELES, and)
 LOS ANGELES BOARD OF HARBOR)
 COMMISSIONERS,)

Respondents)

 BNSF RAILWAY COMPANY,)
 Real Party in Interest,)

 DOES 1-100 Inclusive,)
 Respondents and Real)
 Parties in Interest.)

1 **INTRODUCTION**

2 1. Petitioners file the instant action against Respondents City of Los Angeles, City
3 Council of the City of Los Angeles, Los Angeles Harbor Department, Port of Los Angeles Board
4 of Harbor Commissioners and Real Parties in Interest BNSF Railway Company and Does 1-100.
5 Petitioners allege a violation of the California Environmental Quality Act, Cal. Pub. Res. Code
6 section 21000 et seq. and Respondents' Municipal Code and Charter in connection with the
7 approval of the project and certification of the Final Environmental Impact Report (EIR) for the
8 Southern California International Gateway Project (SCIG or project) LAHD ADP No. 041027-
9 199; SCH No. 2005091116 dated February 2013 and the City Council's May 8, 2013 approval of
10 the project and denial of Petitioner's project administrative appeal.
11

12
13 2. The project proposes to construct a new intermodal railyard located approximately
14 four miles to the north of the Port of Los Angeles on Off-California Tidelands Trustee Property
15 and non-adjacent to California Tidelands Trustee Property located in the City of Los Angeles that
16 will also border the City of Long Beach and the City of Carson. The Southern California
17 International Gateway Project will be operated by the BNSF Railway Company under a new
18 lease from the City of Los Angeles Harbor Department. Trucks from the Port of Los Angeles
19 will deliver container cargo to the BNSF SCIG Facility. The BNSF Facility will generate 2,887
20 additional train trips per year and over 2 million truck trips annually.
21

22
23 3. Despite the potentially significant adverse environmental, public health and traffic
24 impacts of the project on nearby bordering City of Los Angeles, City of Long Beach and City of
25 Carson port communities and potentially significant adverse environmental impacts on coastal
26 wildlife, marine sea life and biological habitats the Respondents approved the project and EIR.
27

28 4. Despite the Petitioners identifying project and significant EIR deficiencies, errors,

1 omissions, misrepresentations of facts, underestimations of air pollution emissions,
2 underestimated health impacts, unidentified health impacts, unsubstantiated information,
3 invalidated data, inappropriate assumptions recommending appropriate and feasible mitigation
4 and alternatives that would eliminate or significantly reduce environmental, public health and
5 traffic impacts to less than significant, the Respondents approved the project and EIR.

7 5. The project was approved by the Respondent Port of Los Angeles Board of
8 Harbor Commissioners on March 7, 2013, the Petitioner's Appeal to the Respondent Los
9 Angeles City Council (appeal) was denied on May 8, 2013 and the Petitioner's Request for
10 Mediation was refused by the Respondents.

12 **PARTIES**

13 6. Petitioner Coalition For A Safe Environment is a non-profit environmental justice
14 community organization headquartered in Wilmington, CA, a City of Los Angeles community
15 which borders the Port of Los Angeles which evaluates Port of Los Angeles project proposals,
16 environmental impact reports, provides verbal testimony public comments and submits written
17 public comments. The Coalition For A Safe Environment has board members, staff, volunteers
18 and members who live in Wilmington, Long Beach, Carson and San Pedro who would all be
19 significantly impacted by the project.

22 7. Petitioner Apostalic Faith Center whose address is 1508 E. Robidoux Street,
23 Wilmington CA 90744 is located approximately one mile from the proposed SCIG Project.
24 Members of Petitioner Apostalic Faith Center will be significantly and negatively impacted by
25 the SCIG Project.

27 8. Petitioner Community Dreams whose office is located at 1601 N. Wilmington.
28 Blvd. Ste. B2, Wilmington, CA 90744 has board members, staff, volunteers and members who

1 live and work in Wilmington, Long Beach, Carson, and San Pedro who will be significantly and
2 negatively impacted by the SCIG Project.

3
4 9. Petitioner California Kids IAQ whose office is located at 1601 N. Wilmington
5 Blvd., Ste. B4, Wilmington, CA 90744 has board members, staff, volunteers and members who
6 live and work in Wilmington, Long Beach, Carson and San Pedro who will be significantly and
7 negatively impacted by the SCIG Project.

8
9 10. Respondent City of Los Angeles (“City”) is a duly incorporated charter City and a
10 political subdivision of the State of California. Respondent City Council of the City of Los
11 Angeles is the City’s elected council body consisting of 15 members.

12 11. Respondent City Council of the City of Los Angeles consists of 15 public elected
13 members to the City of Los Angeles City Council who represent 15 independent council districts.

14 15 12. Respondent Los Angeles Harbor Department (“LAHD”) aka Port of Los Angeles,
16 is an independent department under the control of the City of Los Angeles and is overseen by a
17 Port of Los Angeles Board of Harbor Commissioners. The Port leases its properties and
18 terminals to tenants who operate their own facilities.

19 20 13. Respondent Port of Los Angeles Board of Harbor Commissioners oversees the
21 management and operations of the Port. The five member Board are non-elected officials who
22 are appointed by the Mayor of Los Angeles and is confirmed by the Los Angeles City Council.
23 Many of whom have little to no experience on port operations, equipment, freight transportation
24 and international trade. The majority of Commissioners do not live in a Port of Los Angeles
25 Harbor Community, near the proposed SCIG Project or along a port freight transportation
26 corridor
27

28 14. Petitioners are informed and believe that Real Party in Interest BNSF Railway

1 Company is Texas corporation headquartered at 2650 Lou Menk Drive, Fort Worth, Texas
2 76131-2830 and a subsidiary of Bershire Hathaway Inc..

3 15. Real Parties in Interest Does I to 100 are any entities which have an interest in the
4 granting of a port lease, permit for construction, operation of the project and approval of an
5 environmental impact report. The true names and identities of Does I-100 are not known to
6 Petitioners at this time. Petitioners will amend this Petition to state the names of each Doe at
7 such time as they learn of the identity of the Real Party in Interest.
8

9
10 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 **AND INADEQUATE REMEDIES AT LAW**

12 16. Petitioners participated in the project administrative process by attending public
13 hearings, public meetings, recommending feasible mitigation, providing verbal testimony public
14 comments, submitting written public comments, filed an Appeal before city council and
15 requested mediation and has exhausted all available administrative remedies before Respondents
16 in objecting to the approval of the Project as required by Public Resources Code § 21177.
17

18 17. Petitioners have complied with the requirements of Public Resources Code §
19 21167.5 by mailing a written notice of commencement of this action to Respondents, a copy of
20 which is attached hereto as Exhibit A.
21

22 18. Petitioners have advised Respondents that Petitioners elect to prepare the record
23 of the proceedings relevant to the approval of this Project, as modified, in compliance with
24 Public Resources Code § 21167.6. A copy of that notice is attached hereto as Exhibit B.
25

26 19. Petitioners will comply with Public Resources Code § 21167.7 by filing a copy of
27 the original petition with the California Attorney General.

28 20. Petitioners have no adequate remedy at law unless the Court grants the requested

1 writ of mandate requiring Respondents to set aside their approval of the project, approval of a
2 lease, approval of the environmental impact report and injunctive relief. In the absence of such
3 remedy, the Respondents' approvals will remain in effect in violation of state environmental and
4 planning law; the project will be built without adequate environmental review pursuant to
5 CEQA; Petitioners, organization board members, staff, volunteers, members and local residents
6 will suffer irreparable harm; and the people who reside and work in and around the Port, along a
7 Port freight transportation corridor and the SCIG Project will suffer from the significant
8 environmental, public health and traffic impacts of the Project. The maintenance of this action is
9 for the purpose of enforcing important public policies of the State of California with respect to
10 the protection of the environment under CEQA. The maintenance and prosecution of this action
11 will confer a substantial benefit upon the public by protecting the public from environmental
12 harms and other harms alleged in this Petition. Petitioner is acting as a private attorney general to
13 enforce these public policies and prevent such harm.

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15
16
17 **FIRST CAUSE OF ACTION**

18 **(VIOLATION OF CEQA, as to all parties)**

19 21. Petitioners hereby incorporate by reference the allegations contained in paragraphs
20 1 through 20 inclusive.

21
22 22. Respondents violated CEQA for several reasons, including but not limited to, the
23 following:

24 23. Failure to enter into mediation. Petitioners filed a request for mediation in good
25 faith within five days upon the city council denial of Appeal and the Respondents refused to
26 meet to mediate which denied Petitioners their complete CEQA Administrative due process and
27 rights.
28

1 24. Failure to comply with CEQA’s requirements for analysis of project alternatives
2 including the failure to equally consider a feasible alternative project site location. Respondents
3 did not equally in the spirit of the law consider and assess a feasible alternative project site Pier
4 500 located on Port Tidelands property that was requested, justified and supported by the
5 Petitioner. The future proposed Pier 500 location was not objected by any member of the
6 public during the public comment period. The future proposed Pier 500 alternative site would
7 also not border any City of Los Angeles, City of Long Beach or City of Carson community since
8 it would be located approximately four miles south. The Pier 500 alternative site meets all if
9 not the majority of project objectives and purpose. Over 90% of all truck emissions and traffic
10 congestion would be eliminated having the SCIG built at Pier 500 vs four miles away. On-
11 dock-rail dockside-to-ships is the most efficient and cost-effective method of transferring
12 containers and cargo to rail.
13

14
15 25. Unlawful alternatives sites analysis. Respondents EIR rejects the Pier 500
16 alternative site location by stating that there are no mitigation credits available that would be
17 needed for the water land infill. When the Port of Los Angeles wanted to build Pier 400 there
18 were no local mitigation credits available but the Respondents did in fact find mitigation credits
19 in San Diego County for wetlands restoration even though wetlands could have been restored at
20 the Port of Los Angeles or neighboring Port of Long Beach. Respondents made no assessment
21 and conducted no analysis to determine what it would take to find credits or create new credits.
22 The Port of Los Angeles in its new proposed Port Master Plan has listed Pier 500 as a future
23 container terminal which would require mitigation credits to build and would also be a perfect
24 location for a rail intermodal facility.
25
26

27 26. Failure to comply with CEQA’s requirements to evaluate the significant
28

1 environmental impacts of the project including the failure to conduct adequate assessment,
2 analysis and mitigation of truck and locomotive toxic and criteria pollutant air emissions
3 impacts. Respondents failed to adequately identify and quantify all truck routes, destinations
4 and idling times therefore the EIR has significantly underestimated diesel truck toxic air
5 pollution emissions. Diesel truck exhaust emissions are classified in the State of California as a
6 carcinogenic chemical. The Port analysis failed to include numerous off-port and off-project
7 site required trucks trips which were identified by Petitioner which could easily double or triple
8 the toxic and NOX and SOX criteria air pollutant emission estimates which are unmitigated,
9 particularly at respondent BNSF's other rail yards along the 710 Freeway including the Hobart
10 Yard.
11

12
13 27. Failure to conduct adequate assessment, analysis and mitigation of truck
14 greenhouse gas emissions impacts. Respondents failed to adequately identify and quantify all
15 truck routes, destinations and idling times therefore the FEIR has significantly underestimated
16 greenhouse gas emissions. The Port analysis failed to include numerous off-port and off-
17 project site required trucks trips which were identified by Petitioner which could easily double
18 or triple the greenhouse gas emission estimates which are unmitigated.
19

20
21 28. Failure to include or conduct current assessment of zero emissions trucks for
22 mitigation. Respondents failed to contact any zero emissions truck alternative technology
23 manufacturing company to ascertain its current status for certification for sale by the California
24 Air Resources Board or any other government regulatory agency so that it could be included as
25 immediate mitigation or near term future mitigation. Petitioners submitted as evidence a letter
26 of certification by CARB as part of his public comments. Petitioners further submitted in his
27 public comments a BNSF Report that a zero emissions truck had passed all of its test
28

1 requirement at the BNSF Hobart Yard in the City of Commerce and BNSF failed to disclose this
2 to the Port of Los Angeles. Petitioners advised the Port of Los Angeles of this information
3 which was confirmed. The zero emissions trucks meets all if not the majority of project
4 objectives and purpose.
5

6 29. Failure to adopt feasible mitigation including but not limited to the failure to
7 include or conduct current assessment of zero emissions electric trains for mitigation.

8 Respondents failed to contact any zero emissions electric train manufacturing company to
9 ascertain its current status of technology(s). Respondents refuse to allow Alternative Maglev
10 Train Technology manufacturers to conduct a demonstration of their zero emissions container
11 freight transportation technologies even though one has offered to build a test demonstration
12 track at the Port of Los Angeles at no cost to the port for the past four years. Two U.S. MagLev
13 train manufacturers already have test demonstration tracks at their facilities. The Ports adopted
14 November 20, 2006 Clean Air Action Plan states that the Port will in the next five years will
15 sponsor a green container transport system demonstration prototype to be built, tested and a
16 detailed plan for widespread construction, which did not happen. Petitioners have submitted
17 documentation as to the feasibility and cost-effectiveness of zero emissions Maglev Train
18 Technology. The zero emissions train meets all if not the majority of project objectives and
19 purpose.
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23 30. Failure to include or conduct Locomotive emissions capture technologies tests as
24 mitigation. Respondents refuse to include as mitigation the Advanced Locomotive Emissions
25 Capture System (ALECS) Alternative Technology to reduce the release locomotive emissions
26 into the ambient atmosphere. Proof-of-Concept Testing performed on the ALECS technology
27 at the Union Pacific J.R. Davis Rail Yard in Roseville, California facility was 100% successful
28

1 in capturing 92%-98% of all locomotive engine emissions. There is no other technology that
2 exists that equals this capability. Respondents have refused to sponsor any additional testing at
3 the port or other location to demonstrate that it can capture emissions under all on-site port
4 operations conditions. ALECS can be used at the BNSF SCIG Facility, Delores Yard Facility
5 and Hobart Yard Facility which would all handle container cargo.

7 31. Failure to include or conduct Ship emissions capture technologies tests as
8 mitigation. Respondents failed to include the indirect impacts of emissions from ships that will
9 service the SCIG Project therefore the total emission of the project are underestimated and
10 unmitigated. Respondents refuse to include as mitigation the Advanced Maritime Emissions
11 Capture System (AMECS) Alternative Technology to reduce the release ship emissions into the
12 ambient atmosphere. Proof-of-Concept Testing performed on the AMECS technology at the
13 Port of Long Beach on over 30 ships has been 100% successful in capturing 92%-98% of all
14 ship emissions. There is no other technology that exists that equals this capability.
15 Respondents refuse to mitigate all indirect air pollution emission impacts from ships that will
16 service the BNSF SCIG Project. The port claims that these impacts were included in mitigation
17 in prior EIRS but provided no evidence in the FEIR. Many approved past EIR's were written
18 10-20 years ago and would not meet today's EIR requirements, environmental standards nor
19 include new emerging emissions control technologies.

23 32. Failure to conduct adequate assessment, analysis and mitigation of public health
24 impacts. Respondents' failure to adequately identify and quantify all truck routes, destinations
25 and idling times has resulted in the significantly underestimated diesel truck toxic air pollution
26 emissions and therefore a significant underestimation of the Health Risk Assessment (HRA)
27 conclusions. Petitioners included this concern in his public comments and the Respondent
28

1 refused to update the FEIR HRA. Petitioners further advised the Port of Los Angeles that
2 HRA's even though approved by California state agencies provides limited specific public
3 health information which results in inadequate public health mitigation. HRA's cannot tell you
4 how many residents near the SCIG Project site and along freight transportation corridors have
5 respiratory health diseases such as asthma, sinusitis, COPD, lung cancer or blood diseases such
6 as leukemia, lymphoma and myeloma. HRA's cannot tell you how long they have been ill, how
7 serious is their illness and what has been there negative cumulative impact and socio-economic
8 impacts. Petitioners further requested that the Port include a Health Impact Assessment (HIA)
9 and Public Health Survey to supplement the inadequacy and limitations of an HRA and the port
10 refused even though HIA's have been recommended by the Los Angeles County Department of
11 Health, the US Environmental Protection Agency (US EPA) and the US Center for Disease
12 Control (CDC). The US EPA Region 9 has even drafted a proposed HIA format for the Port of
13 Los Angeles to use at no cost and the Port has refused to include it. The Petitioners further
14 submitted current documents and bibliographies of governmental agency and scientific studies,
15 medical research, reports and fact sheets to support this claim that were ignored by Respondents

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19 33. Reliance on improper mitigation and failure to mitigate all significant impacts
20 including train and truck noise. Respondents failed to adequately identify and quantify all truck
21 and train routes, destinations and idling times therefore the EIR has significantly underestimated
22 the noise impacts to residents and sensitive receptors. EIR conclusions fail to clearly state that
23 the current baseline noise from an existing Union Pacific Railroad ICTF Facility are
24 unacceptable, loud, continuous and currently unmitigated. Disturbing train noise can be heard
25 24hrs/7-days a week as far away as one mile. The noise standards followed by the port are
26 outdated as advised by the Petitioners. The Petitioners further submitted current documents and
27
28

1 bibliographies of governmental agency and scientific studies, medical research, reports and fact
2 sheets to support this claim that were ignored by Respondents.

3 34. Failure to include all sensitive receptors and impacted public. Respondents failed
4 to include all sensitive receptors, members of the public and local workers who will be
5 negatively impacted by SCIG Project who live and border the Port of Los Angeles, port freight
6 transportation corridors, warehouse & distribution centers, container storage yards, chassis
7 storage yards, container inspection facilities, container fumigation facilities, truck companies,
8 truck staging areas, diesel fuel gas stations, truck and train maintenance facilities.

9 35. Failure to conduct adequate assessment, analysis and mitigation of traffic analysis
10 impacts. Respondents failed to include and/or clarify in the EIR traffic analysis if the traffic
11 analysis was conducted for existing traffic scenario, existing plus project, future without project
12 and future with project conditions. Intersection data is not correct because it includes only the
13 number of vehicles passing through an intersection and not the number backed up waiting to go
14 through and the extra idling time while waiting. No detailed trip distribution, routes or
15 assignment data is provided, the information is not readily available to determine if other
16 locations connecting to the SCIG Project site, freeways, highways, port and truck transportation
17 corridors exceed the number of trips required for analysis. Some off-Port site and off-SCIG site
18 truck destinations go through communities and neighborhoods which have bicycle routes,
19 marked walkways, public parks and school zones which would delay a trucks travel time,
20 increase idling time, increase emissions, endanger public safety and go unmitigated.

21 36. Failure to include green building construction materials and clean energy
22 technologies. Respondents failed to consider and include Petitioners recommended construction
23 and project mitigation measures such as the maximization of solar energy opportunities, fuel
24

1 cell power storage and green construction materials which are low to no VOC greenhouse gases,
2 using low-carbon footprint concrete composed of recyclable non-hazardous fly ash & similar
3 by-products, LED Lighting, fiberglass rebar, ZBAR corrosion-resistant rebar, Thermo Poles
4 Rubber Core (utility light poles, pier pilings, telephone poles), soy based products such as
5 adhesives, coatings, solvents, wood products, roofing materials, plastics and eco-friendly
6 flooring materials and cleaners.
7

8 37. Inadequate finding of overriding considerations. The conclusion that specific
9 economic, legal, social, technological or other considerations, make infeasible certain mitigation
10 measures and project alternatives identified in the Final Environmental Impact Report is not true
11 and is based on the port staff biased opinions, inaccurate data, errors in estimates, omissions of
12 information, misrepresentations of facts, incomplete analysis's and unsubstantiated assumptions
13 as identified in public comments and the Petitioners. The benefits of the project outweigh the
14 significant and unavoidable environmental and public health impacts of the project and the
15 findings of fact and statement of overriding consideration are not valid because there are also
16 valid project site feasible and reasonable alternatives and mitigation measures which would
17 prevent City of Los Angeles, City of Long Beach, City of Carson, San Pedro freight
18 transportation corridor communities and warehouse distribution center communities, residents
19 and workers from being exposed to significant increases in criteria pollutants, toxic pollutants,
20 hazardous air pollutants, greenhouse gas emissions, noise, traffic congestion, negative socio-
21 economic and cumulative impacts as identified in public comments and the Petitioners. In fact
22 the Petitioners proposed Pier 500 alternative site and alternative technologies would create more
23 construction and permanent jobs than the Respondents proposal.
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1 **SECOND CAUSE OF ACTION**

2 **(VIOLATION OF DUE PROCESS, GOVERNMENT CODE 1090 AND CITY**
3 **COUNCIL RULES, CITY MUNICIPAL CODE AND CITY CHARTER, as to all parties)**
4

5 38. Petitioners hereby incorporate by reference the allegations contained in paragraphs
6 1 through 37 inclusive.

7 39. Failure to assign to city council committee(s). Respondent in order to fast track
8 the SCIG Project by-passed sending the Petitioners Appeal to one or more Los Angeles city
9 council committees prior to City Council for a final vote as was the traditional procedure and
10 standard city practice which denied Petitioner his complete CEQA Administrative due process
11 and rights. The Appeal as a minimum pursuant to Los Angeles City Council Rules, City
12 Municipal Code and City Charter would have been sent to the Trade, Commerce, & Tourism
13 Committee and potentially the Energy & Environment and Planning & Land Use Management
14 Committee. As a result Petitioners were denied the opportunity to present his Appeal to city
15 council members on each committee which provides for an open unpressured timely discussion,
16 question & answer fact finding dialogue and opportunity to present and negotiate additional
17 mitigation.
18
19
20

21 **THIRD CAUSE OF ACTION**

22 **(VIOLATION OF DUE PROCESS AND GOVERNMENT CODE 1090, as to all**
23 **parties)**

24 40. Petitioners hereby incorporates by reference the allegations contained in
25 paragraphs 1 through 39 inclusive.
26

27 41. Failure to assign to city council committee(s). Respondent in order to fast track
28 the SCIG Project by-passed sending the Petitioners Appeal to one or more Los Angeles city

1 council committees prior to City Council for a final vote as was the traditional procedure and
2 standard city practice which denied Petitioners their complete CEQA Administrative due
3 process and rights. The Appeal as a minimum pursuant to Los Angeles City Council Rules
4 would have been sent to the Trade, Commerce, & Tourism Committee and potentially the
5 Energy & Environment and Planning & Land Use Management Committee. As a result
6 Petitioners were denied the opportunity to present their Appeal to city council members on each
7 committee which provides for an open unpressured timely discussion, question & answer fact
8 finding dialogue and opportunity to present and negotiate additional mitigation.
9
10

11 42. Unlawful vote of harbor commissioner(s). One commissioner recused himself
12 from voting on the SCIG project approval and EIR certification due to a conflict of interest of
13 owning stock in BNSF but did not recuse themselves from voting to approve the lease
14 agreement which would cause them to financially benefit. Another commissioner a current
15 member and past president of a local port dock worker labor union voted in favor of the SCIG
16 project approval and EIR certification which is a conflict of interest. His interest represent
17 solely labor against the general publics and children's' environmental and public health best
18 interests. These two actions denied Petitioners their complete administrative due process and
19 rights and violated Government Code 1090.
20
21

22 43. Unlawful vote of city councilmember. A Los Angeles City Council member
23 voted in City Council in opposition of the Petitioners Appeal who was predispositioned and
24 prejudice in his favor of SCIG Project before the EIR had been approved by the Board of Harbor
25 Commissioners. The councilmember on numerous occasions and in publications
26 acknowledged his support of the SCIG Project. The city council member should have recused
27 himself from the vote and the failure to do so is a violation of procedural due process rights to
28

1 have an impartial decisionmaker on administrative appeal.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Petitioners prays for relief as follows:

4
5 1. For an alternative and peremptory writ of mandate, commanding Respondents
6 to set aside and vacate the approval of the project and certification of the Final EIR.

7 2. For an order enjoining Respondents and Real Parties in interest from taking
8 any action to construct any buildings or structures or to develop or alter the project site,
9 receiving any supplies, materials or equipment, order any supplies, materials or equipment, or
10 enter into contracts in any way until a lawful approval is obtained from Respondents after the
11 preparation and consideration of an FEIR upon a duly noticed hearing;
12

13 3. For an order setting aside the Respondents' project approval and appeal denial,
14 as being contrary to the California Environmental Quality Act, City Council Rules, Municipal
15 Code and City Charter;
16

17 4. For an order setting aside the Respondents' project approval and appeal denial,
18 as being contrary to Government Code 1090 and procedural due process protections;
19

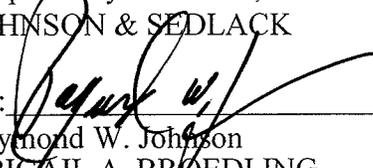
20 5. For costs of the suit;

21 6. For reasonable attorneys' fees; and

22 7. For such other and further relief as the Court deems just and proper.

23
24 Dated: June 7, 2013

Respectfully submitted,
JOHNSON & SEDLACK

25 By: 
26 Raymond W. Johnson
27 ABIGAIL A. BROEDLING
28 KIMBERLY FOY
AMINTA RAFFALOVICH
Attorneys for Petitioners

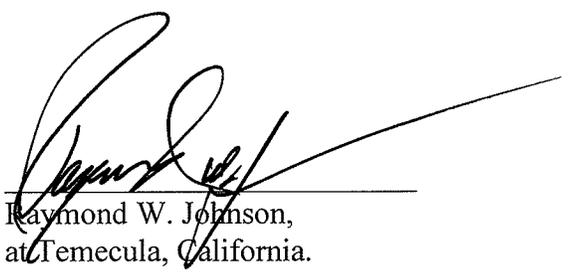
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VERIFICATION

I, Raymond W. Johnson, attorney for Petitioners, declare that I have read the foregoing Petition for Writ of Mandate and know its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true. I verify the foregoing Petition for Writ of Mandate for the reason that Petitioners are absent from the county wherein my office is located.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 7, 2013



Raymond W. Johnson,
at Temecula, California.

EXHIBIT A

Johnson & Sedlack

ATTORNEYS at LAW

Raymond W. Johnson, Esq. AICP
Carl T. Sedlack, Esq. Retired
Abigail A. Broedling, Esq.
Kimberly Foy, Esq.
Aminta Raffalovich, Esq.

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City of Los Angeles
June Lagmay, City Clerk
City of Los Angeles
200 N Main Street, Room 360
Los Angeles, CA 90012

Port of Los Angeles Board of Harbor Commissioners
Clerk of the Board
425 South Palos Verdes Street
San Pedro, CA 90731

City Council of the City of Los Angeles
June Lagmay, City Clerk
City of Los Angeles
200 N Main Street, Room 360
Los Angeles, CA 90012

BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131

Los Angeles Harbor Department
Geraldine Knatz, Executive Director
425 South Palos Verdes Street
San Pedro, CA 90731

BNSF Railway Company
c/o C T Corporation System
818 W Seventh Street
Los Angeles, CA 90017

June 6, 2013

Re: Notice of Intent to File CEQA Petition in Matter of the Approval of the SOUTHERN CALIFORNIA INTERNATIONAL GATEWAY (SCIG) project

To the City of Los Angeles, City Council of the City of Los Angeles, Los Angeles Harbor Department, Port of Los Angeles Board of Harbor Commissioners, and BNSF Railway Company:

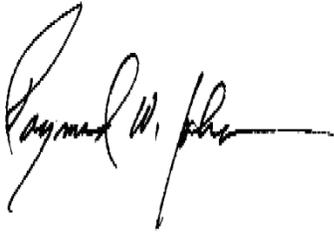
PLEASE TAKE NOTICE, under Public Resources Code § 21167.5, that this letter serves as written notice of the intent of Petitioners, COALITION FOR A SAFE ENVIRONMENT, APOSTALIC FAITH CENTER, COMMUNITY DREAMS, AND CALIFORNIA KIDS AIQ, to file a Petition for Writ of Mandate pursuant to the California Environmental Quality Act (Public Resources Code § 21000 et seq.) (“CEQA”); and violation of due process, Government Code 1090 and City Council rules, City Municipal Code and City Charter; regarding the approvals of

June 6, 2013

Page 2

the SOUTHERN CALIFORNIA INTERNATIONAL GATEWAY (SCIG) project, consisting of certification of an Environmental Impact Report ("EIR"), and all related actions, approvals, findings, leases, and/or adoptions made on or about May 8, 2013.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond W. Johnson", with a horizontal line extending to the right.

Raymond W. Johnson
JOHNSON & SEDLACK

EXHIBIT B

1 JOHNSON & SEDLACK
2 RAYMOND W. JOHNSON SBN 192708
3 ABIGAIL A. BROEDLING SBN 228087
4 KIMBERLY FOY SBN 259746
5 AMINTA RAFFALOVICH SBN 285798
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7 Temecula, CA 92590
8 Telephone: (951) 506-9925
9 Facsimile: (951) 506-9725
10 Email: Esqaicp@wildblue.net

11 Attorneys for Petitioners COALITION FOR A
12 SAFE ENVIRONMENT, APOSTALIC FAITH
13 CENTER, COMMUNITY DREAMS, AND
14 CALIFORNIA KIDS, IAQ

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES

17 COALITION FOR A SAFE ENVIRONMENT,) CASE NO.:
18 a Non-Profit Unincorporated Association;) ASSIGNED FOR ALL PURPOSES TO
19 APOSTALIC FAITH CENTER, a Non-Profit) JUDGE:
20 Unincorporated Association;) DEPARTMENT:
21 COMMUNITY DREAMS, a Non-Profit) ACTION FILED:
22 Unincorporated Association; and)
23 CALIFORNIA KIDS IAQ, a Non-Profit)
24 Unincorporated Association,)

25 Petitioners,)

26 vs.)

27 CITY OF LOS ANGELES,)
28 CITY COUNCIL OF CITY OF LOS)
ANGELES,)
LOS ANGELES HARBOR DEPARTMENT,)
PORT OF LOS ANGELES, and)
LOS ANGELES BOARD OF HARBOR)
COMMISSIONERS,)

Respondents)

_____)
29 BNSF RAILWAY COMPANY,)
30 Real Party in Interest,)

_____)
31 DOES 1-100 Inclusive,)
32 Respondents and Real)
33 Parties in Interest.)

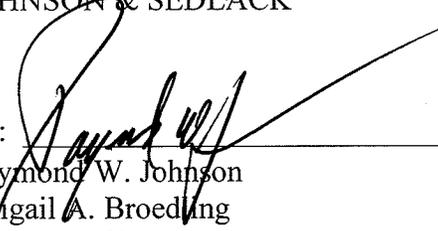
**PETITIONER'S NOTICE OF ELECTION
TO PREPARE ADMINISTRATIVE
RECORD**

(Public Resources Code § 21167.6)

1 Pursuant to Public Resources Code § 21167.6, Petitioners COALITION FOR A SAFE
2 ENVIRONMENT, APOSTALIC FAITH CENTER, COMMUNITY DREAMS, and
3 CALIFORNIA KIDS IAQ hereby notify Respondents, CITY OF LOS ANGELES et al., of
4 Petitioners' election to prepare the administrative record of proceedings relating to this action.
5

6 Dated: June 7, 2013

Respectfully submitted,
JOHNSON & SEDLACK

8
9 By: 
10 Raymond W. Johnson
11 Abigail A. Broedling
12 Aminta Raffalovich
13 Kimberly Foy
14 Attorneys for Petitioners
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