


1 RACHEL B. HOOPER (State Bar No. 98569)
WINTER KING (State Bar No. 237958)
2 ERIN B. CHALMERS (State Bar No. 245907)
SHUTE, MIHALY & WEINBERGER LLP
3 396 Hayes Street
San Francisco, CA 94102
4 Telephone: (415) 552-7272
Facsimile: (415) 552-5816
5 Hooper@smwlaw.com
King@smwlaw.com
6 Chalmers@smwlaw.com

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John A. Clarke, Executive Officer/Clerk
BY  Deputy
Victor Sino-Cruz

7 DANIEL P. SELMI (State Bar No. 67481)
8 919 S. Albany St.
Los Angeles, CA 90015
9 Telephone: (213) 736-1098
Facsimile: (949) 675-9861
10 Dselmi@aol.com

11 ROBERT E. SHANNON (State Bar No. 43691)
12 City Attorney
MICHAEL J. MAIS (State Bar No. 90444)
13 Assistant City Attorney
CITY OF LONG BEACH
14 333 West Ocean Boulevard - 11th Floor
Long Beach, CA 90802
15 Telephone: 562-570-2200
Robert.Shannon@longbeach.gov
16 Michael.Mais@longbeach.gov

17 Attorneys for City of Long Beach

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

20 **BS143356**

21 CITY OF LONG BEACH,

22 Petitioner,

23 v.

24 CITY OF LOS ANGELES, LOS
ANGELES CITY COUNCIL, CITY OF
25 LOS ANGELES HARBOR
DEPARTMENT, LOS ANGELES
26 BOARD OF HARBOR
COMMISSIONERS, and DOES 1-20,

27 Respondents.
28

Case No.

**Petition for Writ of Mandate and
Complaint for Injunctive Relief**

[CCP § 1085 (1094.5); California
Environmental Quality Act ("CEQA")].

By Fax

1 BURLINGTON NORTHERN SANTA FE
2 RAILWAY. BNSF RAILWAY
3 COMPANY and DOES 21-40

4 Real Parties in Interest.

INTRODUCTION

1. This action challenges the decisions of the City of Los Angeles, the Los Angeles City Council, the Los Angeles Harbor Department and its Board of Harbor Commissioners (collectively, “Respondents”) to approve the Southern California International Gateway Project (“SCIG” or “Project”) and to certify the environmental impact report (“EIR”) for the Project on or about May 8, 2013.¹ The challenged Project involves approval for construction, operation, and leasing of a new railyard where thousands of trucks each day will bring containers from the Ports of Los Angeles and Long Beach (collectively, “Ports”) and load them onto rail cars. The approved lease allows Real Parties in Interest Burlington Northern Santa Fe Railway and BNSF Railway Company (collectively, “BNSF”) to operate the facility for 50 years.

2. As Respondents concede, the negative effects of the railyard Project will be borne almost entirely by the residents of West Long Beach, a low-income, minority neighborhood located across the Terminal Island Freeway from the Project site. Because this area already suffers from extensive air pollution, the Project’s impact on public health, including the health of children in nearby schools and residents of a supportive housing facility serving homeless veterans and families, is expected to be devastating. Unfortunately, rather than grapple with this problem through adoption of appropriate mitigation for the Project, Respondents’ EIR systematically downplayed the issue, ignoring the comments of the City of Long Beach and numerous regulatory authorities, environmental organizations and members of the public. Given the City of Los Angeles’ asserted practice of fully mitigating project impacts on its own residential neighborhoods, Respondents’ refusal to address the severe health impacts on Long Beach residents is shocking. And, because the City of Long Beach demonstrated that feasible mitigation measures were readily available to reduce the Project’s most severe effects, Respondents’ actions violate CEQA.

¹ The Project, including the EIR certification, Site Preparation and Access Agreement, and 50-year Permit, was referred to by Respondents as Item Nos. 9 and 10 on the City Council’s Agenda for May 8, 2013, and as Council File Nos. 13-0295, 13-0295-S1 through 13-0295-S8, and 13-0398.

1 3. The scope of the approved Project is extensive and long-term. The Project entails
2 the construction of approximately 20 miles of new train tracks, new and expanded rail bridges,
3 paved roadways and a truck gate complex on-site, and a new interchange on Pacific Coast
4 Highway. Real Party in Interest BNSF will build and operate 20 rail-mounted cranes, each of
5 which is up to 100 feet tall; container loading and storage areas; a locomotive service area; and
6 administrative and yard equipment maintenance facilities. To accommodate this new railyard,
7 Respondents' approval also authorizes the termination of leases for all existing tenants on the
8 Project site, the possible relocation for some of the tenants, and the demolition of all onsite
9 buildings and facilities.

10 4. By 2035, the Project will result in 2 million truck trips per year at the Project site,
11 loading and unloading up to 1.5 million shipping containers annually. This means that, at full
12 capacity, an average of approximately 5,542 trucks, carrying 4,167 containers, would arrive at
13 and depart from the facility each day, in addition to hundreds of employee and vendor vehicle
14 trips. On busy days, the number of trucks is expected to exceed 7,000 per day. In addition,
15 2,880 trains per year, or eight trains per day, will arrive and depart from the Project site, each of
16 which has between three and four diesel-powered locomotives. The trains are one to two miles
17 long.

18 5. The West Long Beach area, to the east of the Project, includes hundreds of single-
19 family homes as well as two high schools, a middle school, two elementary schools, two child
20 care centers, a supportive housing complex (Century Villages at Cabrillo), and a medical center.
21 Because residents of this neighborhood are already exposed to high levels of air pollution from
22 the adjacent freeway and nearby industrial uses, local officials, academics and residents have
23 come to refer to the area as the "diesel death zone." With implementation of the Project,
24 thousands of diesel trucks will exit the Terminal Island Freeway each day and drive within a few
25 hundred feet of Century Villages at Cabrillo, exposing the residents and employees at this
26 transitional housing center for the homeless to toxic air contaminants and excessive noise. This
27 relentless traffic—the Project will operate all day and night, seven days a week—will also make
28 it difficult to enter and exit Century Villages at Cabrillo, whose only entrance is adjacent to the

1 freeway off ramp. Even the EIR, which includes an inaccurate analysis that understates the
2 Project's noise impacts, acknowledges that the Project will have significant noise impacts at
3 night, disturbing the sleep of nearby residents.

4 6. Respondents' failure to fully mitigate the Project's impacts on these sensitive
5 receptors not only violates CEQA, but is also inconsistent with their previously stated goals for
6 operating the Port and managing Port lands. The Mayor of Los Angeles has set a goal for the
7 Harbor District to increase growth while mitigating the impacts of that growth on the local
8 communities and the Los Angeles region. The Harbor District is supposed to carry out this goal
9 in part by implementing pollution control measures on projects within its jurisdiction, including
10 implementing elements of the Clean Air Action Plan ("CAAP"), a Plan jointly signed by the
11 Ports and developed with the cooperation and participation of the South Coast Air Quality
12 Management District, California Air Resources Board and U.S. Environmental Protection
13 Agency. Unfortunately, this Project does not comply with either the letter or spirit of the
14 CAAP. Accordingly, the South Coast Air Quality Management District ("Air District"),
15 California Air Resources Board, U.S. Environmental Protection Agency, and the City of Long
16 Beach have all submitted comments critical of the Project, specifically decrying Respondents'
17 failure to adopt mitigation that would reduce the Project's significant air quality impacts.

18 7. The Project will also replace several existing commercial tenants on the Project
19 site who provide more than 1,000 full time jobs. As these businesses stated repeatedly in
20 comments regarding the Project, it is not likely that they will all be able to find suitable
21 replacement property in the area; as a result, the region may entirely lose these companies and
22 the services and employment they provide. In return for eliminating more than 1,000 jobs, the
23 Project will provide only approximately 450 new permanent jobs at build-out, which will not
24 even occur for a decade. The 1,500 construction jobs touted by Respondents will only last for a
25 few years.

26 8. Numerous agencies, organizations and individuals submitted oral and written
27 comments to Respondents, urging them to provide a more thorough environmental analysis of
28 the Project's impacts and to require more mitigation for those impacts. Many of the agencies

1 submitted detailed suggestions for mitigation measures that Respondents could implement, and
2 they demonstrated how such mitigation was feasible. Unfortunately, Respondents refused to
3 adopt virtually any of the mitigation proposed by the City of Long Beach, the Air District and
4 other agencies and organizations. Instead, Respondents erroneously claimed that additional
5 mitigation was unnecessary or infeasible, and adopted the Project almost exactly as proposed.

6 9. Respondents' actions in approving the Project violate the California
7 Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.*; and the CEQA
8 Guidelines, Title 14, California Code of Regulations, § 15000 *et seq.* Respondents violated
9 CEQA by certifying an EIR for the Project that fails: (a) to provide an accurate or complete
10 description of the Project; (b) to adequately analyze or mitigate the Project's significant
11 individual and/or cumulative impacts on the environment, including but not limited to the
12 impacts on air quality, transportation and traffic, noise, climate change, inducement of growth,
13 and aesthetics; or (c) to adequately analyze alternatives to the Project. In addition, Respondents
14 failed to support their findings about the Project impacts and the feasibility of mitigation
15 measures and alternatives with substantial evidence.

16 10. For all of these reasons, Respondents' approval of the Project and certification of
17 the EIR must be overturned.

18 PARTIES

19 11. Petitioner City of Long Beach ("Long Beach" or "Petitioner") is a charter city
20 duly organized and existing under Government Code sections 34000, *et seq.*, and located within
21 the County of Los Angeles, California. The West Side neighborhood of Long Beach is located
22 adjacent to the Project site and will be severely impacted by the Project's noise, emissions and
23 other impacts. Long Beach has a direct and beneficial interest in Respondents' compliance with
24 CEQA and the CEQA Guidelines. These interests will be directly and adversely affected by the
25 Project approval, which violates provisions of law as set forth in this Petition and which would
26 cause substantial and irreversible harm to the health and welfare of Long Beach residents. The
27 maintenance and prosecution of this action will confer a substantial benefit on the public by
28 protecting the public from the environmental and other harms alleged herein.

1 12. Respondent City of Los Angeles is a charter city duly organized and existing
2 under Government Code sections 34000, et seq., and located within the County of Los Angeles,
3 California, and is responsible for regulating and controlling land use in the incorporated territory
4 of the City.

5 13. Respondent Los Angeles City Council is the duly elected legislative body for the
6 City of Los Angeles responsible for implementing the City's land use planning.

7 14. Respondent Los Angeles Harbor Department (also known as the Port of Los
8 Angeles) is an agency of the City of Los Angeles that is responsible for managing the Port of
9 Los Angeles. The Harbor Department is the "lead agency" for purposes of Public Resources
10 Code section 21067, with principal responsibility for conducting environmental review for and
11 approving the Project.

12 15. Respondent Board of Harbor Commissioners consists of five members appointed
13 by the Mayor of Los Angeles, and confirmed by the Los Angeles City Council, that oversee the
14 management and operation of the Los Angeles Harbor Department.

15 16. Real Party in Interest BNSF Railway Company is a Delaware corporation,
16 transacting business in the State of California and in the County of Los Angeles. BNSF's
17 corporate headquarters is located at 2650 Lou Menk Drive, Fort Worth, TX 76131-2830, and it
18 also has offices at 818 W Seventh St., Los Angeles CA 90017. Because the Notice of
19 Determination filed for the Project listed the Project applicant's name as Burlington Northern
20 Santa Fe Railway, Petitioner is also naming this entity as a Real Party in Interest pursuant to
21 Public Resources Code section 21167.6.5(a).

22 17. Petitioner does not know the true names and capacities, whether individual,
23 corporate, associate or otherwise, of respondents DOE 1 through DOE 20, inclusive, and
24 therefore sue said respondents under fictitious names. Petitioner will amend this Petition to
25 show their true names and capacities when the same have been ascertained. Each of the
26 respondents is the agent and/or employee of respondent City, and each performed acts on which
27 this action is based within the course and scope of such respondent's agency and/or
28 employment.

18. Petitioner does not know the true names and capacities, whether individual, corporate, associate or otherwise, of real parties in interest DOE 21 through DOE 40, inclusive, and therefore sue said real parties in interest under fictitious names. Petitioner will amend this Petition to show their true names and capacities when the same have been ascertained. Each of the real parties in interest is the agent and/or employee of each other real party in interest, and each performed acts on which this action is based within the course and scope of such real party in interest's agency and/or employment.

JURISDICTION AND VENUE

19. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code of Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21168, 21168.5 and 21168.9.

20. The Project is proposed for construction in Los Angeles County, and Respondents approved the Project in Los Angeles County. As such, venue is proper in this Court because the cause of action alleged in this Petition arose in Los Angeles County.

21. Petitioner has complied with the requirements of Public Resources Code section 21167.5 by serving a written notice of Petitioner's intention to commence this action on Respondents on June 4, 2013. A copy of this written notice and proof of facsimile transmission is attached as Exhibit A to this Petition.

22. Petitioner is complying with the requirements of Public Resources Code section 21167.6 and Los Angeles County Superior Court Local Rule 3.232(d)(2)(i) by concurrently filing a notice that they are considering election to prepare the administrative record for this action.

23. Petitioner is sending a copy of the Petition to the California Attorney General concurrently with filing, thereby complying with the requirements of Public Resources Code section 21167.7. A copy of this written notice is attached hereto as Exhibit B.

24. Petitioner has performed any and all conditions precedent to filing this instant action and has exhausted any and all available administrative remedies to the extent required by law.

25. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require Respondents to set aside their approval of the Project. In the absence of such remedies, Respondents' approval will remain in effect in violation of State law.

STATEMENT OF FACTS

Environmental Review

26. On or about September 19, 2005, the Los Angeles Harbor Department filed a Notice of Preparation of a Draft Environmental Impact Report for the Project (“NOP”). The NOP identified the Harbor Department as the Lead Agency for the Project.

27. On or about October 31, 2005, the Harbor Department filed a Supplemental Notice of Preparation of a Draft Environmental Impact Report for the Project. The Supplemental NOP made various changes to the original NOP related to identifying alternatives to portions of the Project, including potential relocation areas for existing tenants on the Project site and alternatives to diesel truck transport of cargo from the Ports to the Project site.

28. Dozens of agencies, organizations and individuals submitted comments on the NOP. For example, the Air District submitted a letter to the Los Angeles Harbor Department dated December 15, 2005 in which it noted that the Project is located in an area that already fails to attain state and federal air quality standards and that is adjacent to a community already severely impacted by air pollution. The Air District exhorted the Harbor Department to thoroughly assess the Project's public health impacts and to use its creative energies to find ways to mitigate those impacts. In particular, the Air District stated that the Project must use the cleanest technologies feasible for all equipment in order to mitigate the likely significant impacts of the Project. To the extent that low-emitting technologies might not be immediately feasible, the District emphasized that Project approval must include enforceable commitments and schedules to implement such technologies when they become feasible. The Air District also noted that the Project objectives appeared to be so narrowly drafted as to constrain serious consideration of Project alternatives, such as other locations for the Project, as required by

1 CEQA. In addition, representatives from the Villages at Cabrillo commented that the additional
2 truck traffic associated with the Project would make it difficult for residents and employees at
3 the Villages at Cabrillo to enter and exit their facility, and that increased pollution from the
4 trucks would exacerbate existing air quality problems.

5 29. The Los Angeles Harbor Department circulated a draft environmental impact
6 report ("DEIR") for the Project on or about December 23, 2011.

7 30. In a letter dated January 30, 2012, Petitioner criticized the DEIR and requested
8 that it include more information to help the public understand the Project's true impacts.
9 Among other issues, Petitioner noted that the DEIR used an old baseline date against which it
10 measured Project impacts, and erroneously credited the Project with reducing emissions by
11 implementing future emissions control measures. In fact, future emission controls and
12 reductions were already required and would occur with or without the Project. Both of these
13 errors masked the Project's true air quality impacts. In addition, Petitioner criticized the EIR's
14 erroneous assumption that the Project would significantly reduce truck traffic because it would
15 replace current truck trips to BNSF's Hobart Yard. Likewise, Petitioner commented that the
16 EIR's analysis of cumulative impacts, health risks, noise, alternatives, and transportation was
17 inadequate or flawed. Due in part to the inadequate analysis, the DEIR also failed to analyze
18 and require all feasible mitigation measures to reduce the Project's significant noise, air quality
19 and other impacts. Finally, Petitioner expressed concern that the Project would eliminate more
20 than 1,000 good full-time jobs, while providing only a few hundred permanent jobs and a few
21 hundred temporary construction jobs. The DEIR did not adequately analyze the impacts of
22 these job losses, nor did the City of Los Angeles identify ways to avoid or lessen these impacts.

23 31. On November 30, 2011, the Air District submitted a letter also criticizing the
24 DEIR's use of an old baseline that caused the document to understate the Project's actual
25 impacts. On February 1, 2012, the Air District submitted an additional letter in which it detailed
26 numerous flaws in the DEIR's analysis and proposed a number of critical mitigation measures
27 that should be included in the Project. The proposed mitigation included binding measures to
28

1 require zero-emission container movement between the Ports and the Project, and to require use
2 of cleaner locomotives, by dates certain.

3 32. Numerous other groups and agencies similarly criticized the DEIR. For example,
4 on January 31, 2012, the Natural Resources Defense Council, East Yard Communities For
5 Environmental Justice, Coalition For Clean Air, Communities For A Better Environment, San
6 Pedro And Peninsula Homeowners Coalition, and others submitted a 32-page comment letter
7 condemning the DEIR. These organizations pointed out fundamental flaws in the DEIR's air
8 quality, health and traffic analysis, and its failure to require all feasible mitigation, including
9 zero-emissions container movement. The groups also criticized the DEIR's misleading project
10 description and analysis of alternatives; in particular, the document failed to analyze a true on-
11 dock rail alternative that would preclude the need for millions of trucks to drive from the Ports
12 to a railyard facility. On February 1, 2012, the U.S. Environmental Protection Agency
13 submitted a comment letter also recommending further consideration of alternative sites.
14 Importantly, the federal agency also proposed that the Project's vague goals of promoting low-
15 or zero-emission technologies be replaced with specific commitments to incorporate zero-
16 emission transportation technologies by dates certain. On February 21, 2012, the California Air
17 Resources Board also submitted a letter with similar themes. For example, the agency
18 recommended that the Project include a variety of additional actions to support the development,
19 demonstration, and deployment of zero-emission technology to reduce regional emissions and
20 the localized health risk from the Project. Likewise, on January 31, 2012, the Long Beach
21 Unified School District submitted a letter in which it criticized the EIR's failure to adequately
22 disclose and mitigate the significant air quality, noise and traffic risks to District schools, staff
23 and students.

24 33. In total, the Los Angeles Harbor Department received more than 450 written and
25 oral comments on the DEIR. In response to the comments, the Harbor Department issued a
26 recirculated draft environmental impact report ("RDEIR") for the Project on or about September
27 27, 2012. The RDEIR slightly modified the environmental analysis for air quality impacts, used
28 an updated cargo forecast based on more recent data, and made other changes to the document.

1 34. On October 15, 2012, Long Beach formally requested that the Harbor Department
2 hold a community meeting to discuss the RDEIR. The Harbor Department initially refused, and
3 Long Beach set up its own community meeting. Eventually, representatives from the Harbor
4 Department did attend the meeting, where dozens of speakers, including representatives of the
5 West Long Beach Neighborhood Association, Air District and Long Beach Unified School
6 District, as well as residents, spoke about the need to protect children's and residents' health,
7 and the inadequacies of the RDEIR. Long Beach then submitted the transcript from the meeting
8 to the Harbor Department for its consideration.

9 35. Long Beach also submitted a letter dated November 8, 2012, criticizing the
10 RDEIR's failure to correct numerous deficiencies in the DEIR. In particular, the RDEIR still
11 failed to include a full and accurate description of the Project; failed to adequately analyze
12 Project-specific and cumulative impacts to visual resources, air quality, climate change,
13 hazardous materials, land use, noise, and transportation; and failed to include an adequate
14 analysis of feasible alternatives and mitigation measures that would reduce the Project's
15 impacts. Long Beach explained in detail why further mitigation was needed and provided a list
16 of mitigation measures for Respondents to consider. In particular, Long Beach commented that
17 Respondents should help fund the reconfiguration of the Terminal Island Freeway to the north of
18 Pacific Coast Highway in order to turn it into a smaller, two-lane road with a minimum 75-foot
19 wide landscaped buffer. The smaller road, which would be located adjacent to the most
20 impacted communities in West Long Beach, would not be designated as a truck route, and the
21 buffer would reduce the Project's noise and air quality impacts. Long Beach also proposed a
22 community grant program to pay for installation of double-paned windows, home air-filtration
23 systems and other improvements to homes and schools in West Long Beach. Such measures,
24 which are similar to other mitigation implemented in the region, would reduce the severe health
25 risks expected to result from the Project's diesel emissions.

26 36. The Air District, NRDC, Long Beach Unified School District and others also
27 submitted comments on the RDEIR, once again pointing out the numerous, serious deficiencies
28 in the document. For example, in its letter dated November 14, 2012, the Air District expressed

1 concern that many of the most critical issues that the District raised in its February 1, 2012 letter
2 still remained unaddressed in the RDEIR. In particular, the RDEIR still did not propose
3 mitigation or a project alternative that included a zero-emission container movement system,
4 even though such a system would be feasible in the early years of Project implementation.
5 Equally troubling, the document continued to distort the Project's impacts by inconsistently
6 describing and analyzing impacts related to the Hobart railyard, another BNSF transload railyard
7 20 miles inland. Specifically, the RDEIR claimed that the Project would eliminate 95% of the
8 truck trips carrying international cargo from the Port to the Hobart facility, but then refused to
9 analyze what would replace that cargo at Hobart.

10 37. The Harbor Department issued the final environmental impact report ("FEIR") on
11 February 22, 2013. Regrettably, the FEIR still failed to fully address many of the issues on
12 which Petitioner and others had commented.

13 38. After the issuance of the FEIR, the Air District again submitted comments
14 criticizing the inadequate environmental review. In a letter dated March 6, 2013, the District
15 expressed its overarching concern that the FEIR still did not fully describe the air quality and
16 public health implications of the proposed Project, or analyze all feasible mitigation measures to
17 reduce those impacts. In addition, the FEIR did not adequately respond to numerous comments;
18 in particular, because the Port of Los Angeles failed to provide all relevant air quality modeling
19 files, the Air District was unable to understand how the EIR reached its conclusions. NRDC, the
20 West Long Beach Association, East Yard Communities for Environmental Justice, Greater Long
21 Beach Interfaith Community Organization and others also commented on the FEIR, expressing
22 their alarm that the document still contained many errors and omissions. For example, the
23 organizations noted that the FEIR contained only a single enforceable mitigation measure to
24 reduce air quality impacts. Long Beach presented its comments on the FEIR orally at the
25 Harbor Department's hearing on the Project.

1 **Project Approval**

2
3 39. On or about March 7, 2013, the Board of Harbor Commissioners of the Los
4 Angeles Harbor Department ("Board of Harbor Commissioners") approved the Project and
5 certified the EIR (Resolution No. 13-7451).

6 40. On or about March 8, 2013, the Board of Harbor Commissioners filed a Notice of
7 Determination for the Project.

8 41. On or about March 21, 2013, the Board of Harbor Commissioners approved a Site
9 Preparation and Access Agreement and Permit for the SCIG site (Order No. 13-7125). These
10 agreements allow BNSF to use the Project site for construction and operation of the SCIG for 50
11 years. Pursuant to Los Angeles' charter, these agreements also required approval of the Los
12 Angeles City Council.

13 42. Pursuant to the Los Angeles Municipal Code and Public Resources Code section
14 21151(c), Petitioner, the Air District, NRDC, Coalition for Clean Air, East Yard Communities
15 for Environmental Justice, Long Beach Unified School District, Coalition for a Safe
16 Environment, and five companies that are current tenants on the Project site and that will be
17 displaced (Fast Lane Transportation, California Cartage Company, Three Rivers Trucking, Inc.,
18 Los Angeles Harbor Grain Terminal, and San Pedro Forklift), appealed the Board of Harbor
19 Commissioners' approval to the Los Angeles City Council.

20 43. In its notice of appeal, Petitioner reiterated its ongoing concern with the Project's
21 severe impacts on Long Beach residents' health and welfare, and described the numerous flaws
22 in the EIR's analysis and mitigation. Petitioner attached its prior comment letters, as well as a
23 comment letter of the Air District, to its appeal letter.

24 44. Likewise, in their notice of appeal, NRDC, Coalition for Clean Air and East Yard
25 Communities for Environmental Justice described how the Board of Harbor Commissioners'
26 Project approval violated CEQA because the EIR failed to include all feasible mitigation for
27 significant air quality, noise, land use, and other impacts and failed to analyze a sufficient range
28 of alternatives. In addition, these groups challenged the Los Angeles Harbor Department's

1 failure to adequately respond to organizations' comments and its failure to issue legally
2 adequate statements of overriding consideration when approving the Project.

3 45. Following these appeals, the Los Angeles Harbor Department entered a tolling
4 agreement with Long Beach and other appellants, tolling the running of any statute of
5 limitations from the Los Angeles Harbor Department's initial posting of the NOD for the
6 Project.

7 46. On May 7, 2013, Long Beach submitted its final letter commenting on the
8 inadequacy of the environmental review for the Project. Long Beach pointed out that because
9 the EIR did not describe the full scope of the Project or analyze its ability to increase business at
10 the Ports, the document minimized the extent of the Project's impacts, in violation of CEQA.
11 Long Beach also alerted Respondents to several serious flaws in the EIR's traffic analysis, such
12 as its reliance on faulty baseline traffic data and its use of an artificially restricted study area.
13 Finally, Long Beach noted that the EIR failed to properly analyze or mitigate the Project's
14 climate impacts. Of particular concern, the EIR included no discussion of how the Project's
15 emissions of greenhouse gases (GHG) will affect the state's ability to achieve the goals of AB
16 32 and Executive Orders S-3-05 and B-16-2012, which call for steep reductions in GHGs by
17 2050. The EIR also made no attempt to analyze the Project's cumulative contribution to GHG
18 emissions or consider measures to reduce those impacts, such as requiring zero-emissions
19 transportation technology.

20 47. On or about May 8, 2013, the Los Angeles City Council held a public hearing at
21 which it denied all of the appeals, approved the Project, and certified the EIR. In addition, the
22 City Council separately approved the lease with BNSF for use of the Project property.

23 48. Counsel for Long Beach was present at the hearing, but was told she could not
24 speak during the time allotted for appellants' testimony because another witness (Long Beach's
25 mayor) had already spoken. Although counsel had also submitted a speaker card to speak during
26 the public comment portion of the hearing, the City Council closed the public comment period
27 before allowing her to speak. Numerous other members of the public were similarly denied an
28 opportunity to comment on the Project at that hearing.

49. The City of Los Angeles and its Harbor Department filed another Notice of Determination for the Project on or about May 9, 2013.

50. On or about May 10, 2013, Petitioner sent a letter to the City of Los Angeles and its Harbor Department, as well as BNSF, requesting that the City of Los Angeles and its Harbor Department enter into mediation with the City of Long Beach pursuant to Public Resources Code section 21167.10. By a letter dated May 17, 2013, the City of Los Angeles and its Harbor Department denied Petitioner's mediation request.

CAUSE OF ACTION

(Violations of CEQA: Pub. Res. Code §§ 21000, et seq.)

51. Petitioner hereby realleges and incorporates the allegations set forth in each of the paragraphs above.

52. CEQA requires the lead agency for a project with the potential to cause significant environmental impacts to prepare an EIR that complies with the requirements of the statute, including but not limited to the requirement to analyze the project's potentially significant environmental impacts. The EIR must provide sufficient environmental analysis such that the decision-makers can intelligently consider environmental consequences when acting on the proposed project.

53. CEQA also mandates that the lead agency identify and adopt feasible mitigation measures that will reduce or avoid any of a project's significant environmental impacts. If any of the project's significant impacts cannot be mitigated to a less than significant level, then CEQA bars the lead agency from approving the project if a feasible alternative is available that would meet the project's objectives while avoiding or reducing its significant environmental impacts. If there is an environmentally superior alternative, the lead agency must either select that alternative instead of the project or make formal findings, supported by substantial evidence, that the alternative is infeasible.

54. Respondents violated CEQA by certifying an EIR for the Project that is inadequate and fails to comply with the requirements of CEQA and the CEQA Guidelines in numerous respects. For example:

1 a) The EIR failed to include a project description that described all aspects of
2 the Project in a consistent, complete and accurate manner. Among other failures, the EIR
3 described the Project as consisting of construction and operation of the SCIG Project, but did
4 not include future operations and impacts from BNSF's Hobart railyard as part of the Project,
5 even though the Project directly involves changes to future operations at the Hobart railyard.
6 The EIR also did not include as part of the Project, and therefore did not analyze all impacts
7 related to, the potential relocation sites for tenants that will be displaced from the Project site,
8 the locomotive maintenance facilities at the Sheila yard, and other integral parts of the Project.

9 b) The EIR failed to adequately analyze and mitigate the Project's severe
10 individual and cumulative air quality impacts, including impacts to the health and welfare of
11 residents and employees of the adjacent West Long Beach neighborhood. In particular, the EIR:

12 (i) used an improper baseline against which it calculated air quality
13 impacts and measured health risks. Among other failures, some sections of the EIR improperly
14 credited the Project with reducing emissions, even though these reductions are independently
15 required pursuant to state and federal regulations, thereby distorting the Project's true impacts.

16 (ii) did not support its conclusions of significance with substantial
17 evidence and used erroneous assumptions in determining the Project's air quality-related health
18 risks. For example, the EIR assumed that students at the numerous Long Beach schools near the
19 Project site would be exposed to the Project's dangerous emissions for only six hours per day,
20 180 days per year, for six years. In fact, many students remain at school for more than six hours
21 per day, particularly if they are using the school's sports facilities after school, which are even
22 closer to the Project site than the school buildings themselves. Because many children attend
23 school from kindergarten through 12th grade at schools adjacent to the Project site, they may be
24 exposed to the pollutants for up to 13 years instead of six. The EIR further downplayed Project
25 impacts by using artificially low and unsupported assumptions regarding the number of trucks
26 that would use the Project facility and employing methodologies that substantially
27 underestimated peak Project emissions. As a result of these and other errors, the EIR failed to
28 identify all construction-related air quality impacts, failed to adequately analyze construction-

1 related air toxics emissions, and did not support emission reductions numbers with substantial
2 evidence.

3 (iii) did not include sufficient information to allow the public to
4 understand and intelligently comment on the EIR's conclusions regarding air quality and health
5 risks. For example, although the Harbor District released some air quality modeling data, it did
6 not provide enough to allow the public to verify that the assumptions used in the modeling were
7 correct or that the emission calculations were supported by substantial evidence. Nor did the
8 EIR sufficiently respond to public comments regarding these and other air-quality related
9 deficiencies.

10 (iv) failed to adopt all feasible mitigation to minimize the Project's
11 significant air quality and health impacts. Mitigation that Respondents should have, but refused
12 to, adopt, includes, but is not limited to: (A) measures that would require BNSF to use a specific
13 number or percentage of low-emission trucks by dates certain, and to transition to zero-emission
14 transport technologies (e.g., zero emission drayage trucks) by dates certain; (B) measures that
15 would require BNSF to use locomotives that meet particular emission standards by dates certain;
16 (C) measures that would require all construction equipment and on-road trucks to meet certain
17 emission standards; (D) establishment of a fund to mitigate noise and air quality impacts on
18 nearby residences, schools, medical centers, and transition housing for the homeless, including
19 funds that could be used to help pay for installation of sound-dampening improvements such as
20 double-paned windows or insulation, or filtered ventilation systems to remove unhealthy
21 particulate air pollutants; (E) funding toward reducing the size of the Terminal Island Freeway
22 so that fewer polluting trucks use the freeway and establishing a vegetated buffer zone that
23 could filter air pollutants and reduce Project-related noise.

24 (v) failed to demonstrate that adopted mitigation measures are effective,
25 certain to occur, and enforceable. In fact, in violation of CEQA, many of the mitigation
26 measures are purely hortatory, contain no enforceable requirements, or include inadequate or no
27 performance standards to guide their potential future implementation. Respondents also failed
28 to meet the correct legal standards for rejecting particular mitigation. For example, (A) the EIR

1 claims that some mitigation is legally infeasible because Respondents do not have the regulatory
2 authority to undertake it, yet Respondents failed to consider whether they have such authority in
3 their proprietary capacity as landlords on the Project site; and (B) the EIR uses the wrong legal
4 test to determine whether some mitigation is feasible. Furthermore, while the EIR describes
5 some measures as effective in reducing the Project's impacts, Respondents neglected to include
6 these measures in the mitigation monitoring and reporting program, thus creating uncertainty
7 whether they are actually enforceable. For example, the EIR identified various recommended
8 lease measures that would serve to reduce Project impacts, but never included them as official
9 mitigation measures.

10 (c) The EIR failed to provide an adequate analysis of, and mitigation for, the
11 Project's individual and cumulative noise impacts, and its conclusions regarding noise impacts
12 are unsupported by substantial evidence. As a threshold problem, the EIR failed to provide an
13 adequate description of existing noise conditions in the Project area, and therefore failed to
14 provide an accurate and complete baseline against which the document could measure the
15 Project's impacts. Compounding that problem, the EIR failed to use realistic assumptions
16 regarding creation and attenuation of noise, used inconsistent and confusing data regarding the
17 Project's noise impacts, and relied upon outdated and improper noise analysis methodologies.
18 Respondents also failed to adequately respond to public comments regarding the Project's noise
19 impacts or even to provide requested information regarding the EIR's methodologies for
20 analyzing them. In addition, the EIR failed to consider measures that would reduce Project
21 noise, including higher and more effective sound barriers and a community mitigation fund that
22 could be used to retrofit houses with double-paned windows, insulation, and other sound-
23 dampening measures.

24 (d) The EIR failed to provide an adequate analysis of, and mitigation for, the
25 Project's individual and cumulative visual and aesthetic impacts. Among other failures, the EIR
26 did not provide an adequate description of existing visual conditions against which the Project's
27 impacts could be measured, failed to provide sufficient analysis and conclusions regarding
28 visual impacts, and failed to require all feasible mitigation for the Project's visual impacts.

1 (e) The EIR failed to provide an adequate analysis of, and mitigation for, the
2 Project's individual and cumulative greenhouse gas and climate change impacts. In particular,
3 the EIR included no discussion of how the Project's emissions of GHGs will affect the state's
4 ability to achieve the goals of AB 32 and Executive Orders S-3-05 and B-16-2012, which call
5 for steep reductions in GHGs by 2050. The EIR also made no attempt to analyze the Project's
6 cumulative contribution to GHG emissions or consider measures to reduce those impacts, such
7 as requiring zero-emissions transportation technology.

8 (f) The EIR analysis of the Project's individual and cumulative impacts related
9 to hazards and hazardous materials is inconsistent and unsupported by substantial evidence.

10 (g) The EIR failed to provide an adequate analysis of, and mitigation for, the
11 Project's impacts on land use, consistency with relevant plans and policies, and impacts on
12 existing tenants. For example, the EIR made numerous unsupported assumptions about the
13 existing tenants' ability to relocate and to maintain their existing business.

14 (h) The EIR failed to provide an adequate analysis of, and mitigation for, the
15 Project's individual and cumulative transportation impacts. Among other errors, the EIR
16 contains inconsistent and unsupported analysis regarding the number of truck trips generated by
17 the Project by itself and in combination with the Hobart facility. The EIR also uses an improper
18 baseline and an overly narrow study area.

19 (i) The EIR failed to adequately analyze or mitigate the cumulative impacts of
20 the Project together with past, present and probable future projects in the region. In particular,
21 the EIR failed to analyze the cumulative air quality, greenhouse gas, noise, health, and other
22 impacts of the Project along with impacts of the proposed expansion of the ICTF railyard, which
23 is located to the north of the Project site, and of the proposed expansion of the I-710. The EIR
24 also failed to analyze cumulative impacts related to the Hobart Railyard and other proposed
25 nearby projects.

26 (j) The EIR failed to provide adequate analysis of, and mitigation for, the
27 Project's growth-inducing impacts. Because the Project will add significant capacity to the
28 transportation system at the Ports, business there is expected to increase. Because of this

1 increase in business, BNSF's Hobart facility will not operate at a lower capacity as Respondents
2 assumed – and other facilities may be needed. Thus, far from improving air quality as the EIR
3 claimed, the Project's increase in capacity to the cargo transportation system will exacerbate
4 pollution in the region. The EIR's failure to analyze this and other environmental impacts
5 resulting from the Project's inducement of growth violates CEQA.

6 (k) The EIR failed to adequately analyze feasible alternatives and to properly
7 justify its rejection of alternatives as infeasible. Instead, the EIR used an unlawfully constrained
8 Project description and objectives to claim that various alternatives were infeasible, failed to
9 support its flawed analysis of the relative environmental impacts of the alternatives with
10 substantial evidence, and used unrealistic assumptions that distorted the reasonably foreseeable
11 impacts of its "no project" alternative. Respondents also failed to adequately respond to public
12 comments regarding alternatives.

13 (l) In approving the Project, Respondents failed to make legally required
14 findings that certain mitigation measures suggested by Petitioner and other commenters were
15 infeasible, even though these measures could have reduced the Project's admittedly significant
16 impacts on air quality, noise and other resource areas. For example, the findings did not even
17 mention Petitioner's proposed community mitigation fund, which could be used to reduce the
18 significant individual and cumulative air quality and noise impacts admittedly caused by the
19 Project.

20 55. As a result of the foregoing defects, Respondents prejudicially abused their
21 discretion by certifying an EIR that does not comply with the requirements of CEQA. As such,
22 Respondents' certification of the EIR and approval of the Project must be set aside.

23 PRAYER FOR RELIEF

24 1. For alternative and peremptory writs of mandate directing Respondents to vacate
25 and set aside their approval of the Project and their certification of the EIR for the Project;

26 2. For alternative and peremptory writs of mandate directing Respondents to comply
27 with CEQA and the CEQA Guidelines, and to take any other action required by Public
28 Resources Code section 21168.9 or as otherwise required by law;

1 3. For a stay, and preliminary and permanent injunctions restraining Respondents
2 and their agents, employees, officers and representatives from undertaking any activity to
3 implement the Project in any way pending full compliance with the requirements of CEQA and
4 the CEQA Guidelines;

5 4. For a stay, and preliminary and permanent injunctions restraining Real Party in
6 Interest and its agents, employees, officers and representatives from undertaking any activity to
7 implement the Project in any way pending full compliance with the requirements of CEQA and
8 the CEQA Guidelines;

9 5. For costs of the suit;

10 6. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and
11 other provisions of law; and

12 7. For such other and further relief as the Court deems just and proper.
13

14 DATED: June 5, 2013

SHUTE, MIHALY & WEINBERGER LLP

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17 By: 

WINTER KING

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19 Attorneys for City of Long Beach
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EXHIBIT A

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

RACHEL B. HOOPER
Attorney
hooper@smwlaw.com

June 4, 2013

Via Facsimile and U.S. Mail

City of Los Angeles
200 N. Spring St.
Los Angeles, CA 90012
Facsimile: (213) 978-1027

Los Angeles City Council
200 N. Spring St., Suite 360
Los Angeles, CA 90012
Facsimile: (213) 978-1027

Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-9778
Facsimile: (310) 519-0291

Los Angeles Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-9778
Facsimile: (310) 519-0291

Re: Notice of Commencement of CEQA Litigation Challenging Approval of the
Southern California International Gateway Project (Council File Nos. 13-0295,
13-0295-S1 through 13-0295-S8, and 13-0398)

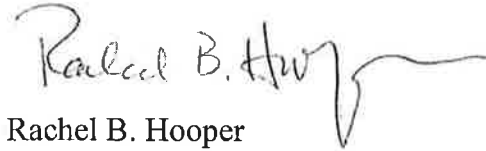
Dear Sir/Madam:

This letter is to notify you that the City of Long Beach intends to file suit against the City of Los Angeles, City Council of Los Angeles, City of Los Angeles Harbor Department, and Los Angeles Board of Harbor Commissioners for failing to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in approving the above-referenced Southern California International Gateway Project and certifying the EIR for the Project (L.A. City Council File Nos. 13-0295, 13-0295-S1 through 13-0295-S8, and 13-0398). This notice is given pursuant to Public Resources Code section 21167.5.

June 4, 2013
Page 2

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in dark ink, appearing to read "Rachel B. Hooper", with a long, sweeping horizontal flourish extending to the right.

Rachel B. Hooper

483138.1

SHUTE, MIHALY
& WEINBERGER LLP

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Jun 4 2013 03:29pm

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13105190291/P744	Normal	04,03:28pm	0'46"	3	* O K	

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

FAX COVER SHEET

Date Sent: June 4, 2013

Client: 744

Number of Pages: 3
(including cover sheet)

Sent By: _____

Original to Follow: Via U.S. Mail

Time Sent: _____

TO:

City of Los Angeles	Fax: 213-978-1027
Los Angeles City Council	Fax: 213-978-1027
Los Angeles Harbor Department	Fax: 310-831-9778, 310-519-0291
Los Angeles Board of Harbor Commissioners	Fax: 310-831-9778, 310-519-0291

FROM:

Rachel B. Hooper	Phone: (415) 552-7272 Ext: 252
	Fax: (415) 552-5816

MESSAGE:

Notice of Commencement of CEQA Litigation Challenging Approval of the Southern California International Gateway Project

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

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P.1
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Jun 4 2013 03:28pm

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SHUTE MIHALY & WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
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Jun 4 2013 03:26pm

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SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

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Rachel B. Hooper	Phone: (415) 552-7272 Ext: 252
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EXHIBIT B

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

WINTER KING
Attorney
king@smwlaw.com

June 5, 2013

Kamala Harris
Attorney General
State of California
1300 I Street
Sacramento, CA 95814


Re: Notice of Filing CEQA Litigation:
City of Long Beach v. City of Los Angeles, et al.

Dear Attorney General Kamala Harris:

Enclosed please find a copy of the Petition for Writ of Mandate and Complaint for Injunctive Relief in the above-entitled action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

Enclosures: Petition for Writ of Mandate and Complaint for Injunctive Relief