

RECOMMENDATION APPROVED AND
RESOLUTION NO. 18-8359 ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS

September 20, 2018


AMBER M. KLESGES
Board Secretary



DATE: SEPTEMBER 19, 2018

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 18-8359 - APPROVE REVOCABLE PERMIT
BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND
CALIFORNIA TRANSLOAD SERVICES, LLC.

SUMMARY:

Staff requests approval of a 30-day Revocable Permit (RP) with California Transload Services, LLC (CTS) for property located at 2401 E. Pacific Coast Highway in Wilmington. CTS is the successor in interest to California Cartage Company (Cal Cartage) which was acquired by CTS' parent company, NFI Industries, Inc., in October 2017. The 85.51 acre site is used for a large transloading operation and truck staging, handling a considerable portion of the containerized cargo throughput of both San Pedro Bay ports. The entire location is within the footprint of the proposed BNSF Railway Co. (BNSF) Southern California International Gateway (SCIG) project.

Previously, the City of Los Angeles Harbor Department (Harbor Department) issued lease documents for the site that were terminated in 2013 pursuant to the development agreement between the Harbor Department and BNSF, and subsequently were replaced by a BNSF license. That license, and development of the SCIG project, has been set aside by order of the California Court of Appeal, in connection with litigation concerning the SCIG project's final environmental impact report, thus necessitating issuance of a lease document to allow CTS' continued and lawful use and occupancy.

Annual revenue is expected to be \$5,363,725 with annual adjustments based on the Consumer Price Index, All Urban Areas, Los Angeles-Long Beach-Anaheim.

RECOMMENDATION:

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

1. Find that the proposed action is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Class 1(14) of the Los Angeles City CEQA Guidelines;
2. Find that the proposed action is in the best interest of the Harbor Department due to the monetary value of the cargo handled and the significant number of jobs created on the site despite negotiated changes to the pre-approved terms and conditions in the Permit template and an estimated financial rate of return that does not meet stated policy targets as enacted by the Board;
3. Approve Revocable Permit No. 18-08 with California Transload Services, LLC;

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4. Authorize the Executive Director to execute and the Board Secretary to attest to the Revocable Permit; and
5. Adopt Resolution No. 18-8359.

DISCUSSION:

Background – In 1995 and 1998, respectively, the Harbor Department issued Revocable Permit No. 95-40 and Agreement 2069 to Cal Cartage to entitle use and occupancy of approximately 85 acres to operate transloading warehouse facilities and related services. The company had operated in some fashion at this location since 1959. As noted above, development of the SCIG project and the BNSF license issued by BNSF to CTS' predecessor in 2013 have been set aside. As such, continued operations on the premises require a new entitlement to establish lawful occupancy and use of the property and to implement contractual provisions such as those concerning rent, indemnity, insurance, environmental remediation, and compliance with applicable laws.

The Harbor Department is aware of various allegations and issues concerning the company's operations on the premises. Staff treated the allegations as relevant and viewed them as material to the analysis of whether to recommend issuance of this 30-day RP. Staff's review of these potential violations of applicable law included a review of determination made by third-party agencies, providing a higher level of materiality and reliability.

Staff determined, based on its review of information available from these third-party agencies, that operations on the premises had given rise to potential legal violations of Occupational Safety and Health Administration (OSHA) regulations, and of the City's Living Wage Ordinance. As to the OSHA violations, Cal Cartage, CTS' predecessor, was subject to cases opened in July 2015, May 2016 and October 2016. The 2015 case is subject to a formal settlement, and the October 2016 case has been resolved and closed. Cal Cartage has contested the May 2016 violations and is in discussions with OSHA concerning their resolution. It bears noting that these issues appear to have arisen prior to NFI's acquisition of the businesses.

As to issues surrounding the Living Wage Ordinance, while legal proceedings were threatened concerning compliance with the ordinance, CTS advises that all permanent employees working in the warehouse/transloading operation on the premises (284) are being paid an hourly wage in excess of the Living Wage requirement, along with medical and retirement benefits. The approximately 400 temporary workers also working in that industry on the premises are also being paid an hourly wage in excess of the Living Wage requirement. The number of temporary workers at any one time depend on demand and need. Staff's review of the information provided in this regard is consistent with CTS' assertion. Declining to issue this RP would result in the loss of all of these warehouse/transloading jobs on Harbor Department property.

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In September 2017, the City's Bureau of Contract Administration, which is charged with enforcement of the ordinance, received three complaints against K&R Trucking, an affiliate at the time of Cal Cartage. The Office of Wage Standards is in the process of obtaining and reviewing records and the investigations are ongoing.

At this time, the known instances of potential violations of applicable law in which a third-party agency has exercised jurisdiction have resulted in no final, adjudged breaches of the law that staff has identified.

Several of the allegations made concern working conditions at the premises. CTS, as an operator, has invested significantly to improve working conditions and appears to be making a good faith effort to address concerns raised about previous ownership. In that regard, it should be noted that CTS has invested over \$600,000 in the facilities to upgrade employee parking access, restrooms and breakrooms.

It is also important to note that the transloading operations that occur at the premises facilitate the smooth flow of cargo on and off of the Harbor Department's terminals, and in and out of both port complexes in the San Pedro Bay. Approximately 700 containers move into and out of the facility on a daily basis, representing approximately 2.5 percent of the total import containers that transit the Port of Los Angeles (Port) with an estimated retail value in excess of \$6 billion annually. From a land use perspective, while the SCIG project in 2013 was deemed a higher priority than this transload operation once developed and in operation, continued transload operations as implemented by the proposed RP clearly remain the highest and best current use for the premises in the interim. As noted below, such operations provide system efficiencies and value that benefit the Harbor Department's tenants and supply chain partners.

Summary of Significant Permit Terms

Effective Date: The Revocable Permit (Transmittal 1) will be effective upon execution by the Executive Director and revocable upon 30 days' written notice.

Premises: The Premises consists of 85.511 acres of paved area, including three transloading warehouses, a railyard, two offices, two pole sheds and minor ancillary structures. The premises mirror what existed prior to the BNSF license agreement, and the use is unchanged.

Compensation: The RP requires the payment of \$446,977 per month, \$5,363,725 per year, in rent.

Permitted Uses: The permitted uses are for the distribution of cargo in containers transported by truck and rail to and from a trans-loading facility and services ancillary thereto.

Security Deposit: Security Deposit in the amount of two months' rent is waived due to the projected interim nature of the entitlement, the long standing on the property (under previous ownership), and other conditions resulting from the imposition of the court order.

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Maintenance: All maintenance of the premises, including all improvements, is the responsibility of the tenant. However, the standard maintenance clause has been modified to eliminate the requirement to modify or rebuild a damaged or lost structure to its original condition. In lieu of making such alteration as may otherwise be required after a casualty event (defined as an event causing substantial destruction of the improvements), the tenant may surrender and restore the Premises and terminate the RP. The original terms are cost prohibitive and of limited market utility given the age of the improvements and the interim nature of the entitlement.

Remedies: The provision governing the available remedies for breach of the proposed RP has been modified to prevent the Tenant and the City from pursuing recovery of consequential damages from one another. As opposed to direct damages, consequential damages are considered indirect. A commonly used example of consequential damages is lost profits suffered by an injured party as a result of the other party's breach of contract.

Environmental Condition: Tenant is responsible, and will indemnify the Harbor Department, for any and all claim and liability arising out of any contamination or release occurring during the pendency of the RP. A Baseline Condition report is attached to the RP and sets the agreed levels of known constituents on the premises as of the Effective Date of the RP. The tenant is responsible to rebut any claim made regarding contamination on-site not otherwise addressed in the Baseline Condition report. The Harbor Department will pursue fully any and all prior occupants of the property and any third-parties which may have caused any contamination if successfully rebutted by the tenant.

Regulatory Compliance: The RP requires compliance with all applicable, laws, standards, rules, and regulations as a condition of occupancy and use. Language in the RP has been modified as agreed between the Parties to fully incorporate the terms and conditions of the agreement given the age and functional utility of the improvements and the interim nature of the entitlement.

Given the set aside of the SCIG project, continuation of transload operations at the premises constitute the highest and best use of that property. Staff's due diligence uncovered no material adjudged violations of law that might constitute impediments to issuance of the RP. From a commercial perspective, CTS' use and occupancy will generate approximately \$450,000 in rent per month while supporting a significant portion of the containerized cargo transiting the Port. In staff's view it is an appropriate rent considering the revocable nature of the entitlement, the condition of the existing improvements and numerous encumbrances on the site including existing land use limitations, future redevelopment plans, and other processes that would be necessary to change the use of the premises and otherwise limit the market utility of the property. Additionally, maintaining CTS' operation will preserve approximately 300 permanent and 400 temporary jobs. Finally, the RP is a 30-day entitlement. If the circumstances underlying staff's recommendation herein deteriorate, the Harbor Department has the ability to terminate the RP on 30 days' notice.

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ENVIRONMENTAL ASSESSMENT:

The proposed Revocable Permit will be issued to CTS to allow the company to continue the same activities and uses on the same property as under previous Harbor Department Revocable Permit No. 95-40 and Agreement 2069, and the successor sublicense agreement from BNSF. The proposed revocable permit is not a new project, and is the issuance of a permit on existing land and structures to continue ongoing activities. As such, the Director of Environmental Management has determined that the proposed action is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The Revocable Permit will produce revenue of \$446,977.10 per month to the Harbor Department, or \$5,363,725.20 per year. This amount will increase by the then applicable CPI at the anniversary of the effective date. Nonetheless, the estimated financial rate of return associated with the Revocable Permit does not meet the stated policy targets, as enacted by the Board.

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the Revocable Permit as to form and legality.

TRANSMITTAL:

1. Revocable Permit




JACK C. HEDGE
Director of Cargo Industrial Real Estate

APPROVED:



EUGENE D. SEROKA
Executive Director

FIS Approval: 
CA Approval: 



MICHAEL DiBERNARDO
Deputy Executive Director