September 28, 2014

Hon. Tani Gorre Cantil-Sakauye,
Chief Justice
California Supreme Court
Earl Warren Building
350 McAllister Street
San Francisco, CA 94102-4797


To the Chief Justice and Associate Justices of the California Supreme Court:

I am writing on behalf of my clients, the Town of Atherton, the Cities of Menlo Park and Palo Alto, California Rail Foundation, Planning and Conservation League, Community Coalition on High-Speed Rail, Transportation Solutions Defense and Education Fund, Mid-Peninsula Residents for Civic Sanity, and Patricia Hogan-Giorni to oppose the requests for depublication of the above-referenced decision by the California Attorney General, the California Department of Transportation, and the North County Transit District.

My clients were the appellants in the above-referenced case, and I represented them both in the trial court and on appeal. While my clients are obviously not pleased that the Court of Appeal’s upheld the trial court on the specific issues they had appealed under the California Environmental Quality Act (“CEQA”), they, and I, nevertheless believe that the case deserves to remain published for its discussion of whether the Interstate Commerce Commission Termination Act (“ICCTA”) preempts application of CEQA to the California high-speed rail project.

The Court of Appeal’s decision is the first published California appellate decision to address preemption under the ICCTA. For that reason alone, it deserves to be published. Further, it is the first published case in any jurisdiction to address the application of the market participant exception under the ICCTA. This gives the decision even greater importance.

This was not a decision that the court issued lightly. While the issue was not addressed in the trial court and was first raised in the Court of Appeal by the Attorney General herself\(^1\), it received extensive briefing not only by the parties themselves but also by numerous amici curiae. Thus the Court of Appeal received the benefit of many hours of thought and effort to guide it in

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\(^1\) Perhaps ironically, earlier this year the Attorney General intervened, pursuant to Government Code §12606, in *Fast Lane Transportation, Inc. v City of Los Angeles et al.* (Contra Costa County Superior Court Case No. CIV NSN14-0300) to support enforcement of CEQA in a case where CEQA might similarly be argued to be preempted by the ICCTA. A copy of that motion is attached hereto as Exhibit A. Apparently, the Attorney General is not bothered by this inconsistency.
its deliberations. Further, the decision itself contains extensive discussion and explanation, making it of exceptional value in providing guidance for future decisions.

All of the letters requesting depublication argue that the decision was wrongly decided. They argue that the Court of Appeal erred in construing the legislature's and the voters' intent in creating and funding the High-Speed Rail Authority. If the Attorney General wished to press these points, her proper recourse was to petition for review, and the other agencies could have supported review. However, depublication is not intended to express the Court's opinion on the correctness of a decision. (Rule of Court 8.1125 subd. (d).)

The requests for depublication also assert that the Legislature did not intend that important state transportation projects be delayed by CEQA review or that CEQA plaintiffs be allowed to use the market participant exception to avoid preemption of their claims. These arguments involve balancing the environmental benefits of requiring CEQA review for major state transportation projects against the problems CEQA review might create for such projects. Such balancing of policy priorities, however, is appropriately left to the Legislature, not the courts. (Casel v. Superior Court (2011) 51 Cal.4th 113, 122.) If the parties seeking depublication feel that major state transportation projects should not be subject to CEQA review, that argument should be addressed to the Legislature, which clearly knows how to exempt classes of projects from CEQA review when it feels such exemption is warranted. (See, e.g., Public Resources Code §21080.13 [exemption from CEQA of projects eliminating a railroad grade crossing], §21080.07 [exemption from CEQA of certain prison construction projects].)

The Court of Appeal's decision here satisfies multiple criteria for publication under Rule of Court 8.1105 subd. (c). Not only does it apply the market participant exception doctrine to an important category of cases under the ICCTA, but it also addresses the application of the doctrine to cases where the public interest would be served by allowing application of the market participant exception. (Town of Atherton et al. v. California High Speed Rail Authority (2014) 228 Cal.App.4th 314, 340, 341.) Depublication of the decision would deprive the legal community of an important decision that makes a significant contribution to the development of the law, not to mention one involving one of the largest public works projects in California’s history. Further, this case will find application in many other public transportation projects in California, especially with the enactment of SB 375, with its emphasis on promoting public transit as an alternative to the private automobile.²

In conclusion, publication of the Court of Appeal's well-reasoned decision on the application of the market participant exception doctrine to preemption of the ICCTA is fully justified under the criteria set forth in Rule of Court 8.1105 subd. (c). The requests for depublication should therefore be denied.

Sincerely,

Stuart M. Flashman
Attorney for Appellants Town of Atherton et al.

² For example, Friends of the Eel River et al. v. North Coast Rail Authority et al., consolidated cases A139222, A139235 (First District) [CEQA challenge to proposed rail project] where supplemental briefing was ordered specifically to address the Town of Atherton decision.
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Attorneys for People of the State of California
ex rel. Kamala D. Harris, Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

FAST LANE TRANSPORTATION, INC., a California corporation,

   Petitioner,
   
   v.
   
   CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; PORT OF LOS ANGELES; LOS ANGELES BOARD OF HARBOR COMMISSIONERS; and DOES 1 through 50, inclusive,

   Respondents.

BNSF RAILWAY COMPANY, a Delaware corporation,

   Real Party in Interest.

AND RELATED CONSOLIDATED CASES.

Case No. CIV MSN14-0300 (Consolidated with Case Nos. CIV MSN14-0308, MSN14-0309, MSN14-0310, MSN14-0311, MSN14-0312, MSN14-0313)

PEOPLE'S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SARAH E. MORRISON IN SUPPORT THEREOF

[CEQA CLAIM]

Hearing Date: 8-6-14
Time:
Judge: Honorable Steve K. Austin
Dept.: 33

Actions Filed: June 5 and 7, 2013

PEOPLE'S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE
(Consolidated Case No. MSN14-1300)
TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on _____________, 2014, at ________, in Department 33 of the Contra Costa County Superior Court, located at 725 Court Street, Martinez CA 94553, the People of the State of California ex rel. Kamala D. Harris, Attorney General ("People"), will move, and hereby do move the Court for leave to intervene in one of the above-captioned consolidated actions pursuant to Code of Civil Procedure section 387, subdivision (b). The People’s proposed Petition for Writ of Mandate in Intervention ("People’s Petition") is attached to this motion as Exhibit 1. The People’s Petition challenges a proposed railyard project, known as the Southern California International Gateway Project, approved by Respondents the City of Los Angeles, the Los Angeles City Council, the Los Angeles Harbor Department, and the Los Angeles Board of Harbor Commissioners (collectively, “Respondents”) under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.)

This motion is based on the following grounds:

1. Pursuant to Government Code section 12606, the People, as represented by the Attorney General, have an unconditional right to intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects that could affect the public in general. Such facts are alleged in the consolidated actions, including in Case Number MSN14-0312.

2. The People have an unconditional right to intervene and must be permitted to intervene as a matter of right pursuant to Code of Civil Procedure section 387, subdivision (b).

3. The People’s motion to intervene is timely and will not impair or impede the prompt resolution of the issues presented in this action.

4. Based on the unconditional right of the People to intervene pursuant to Government Code section 12606 and in accordance with Code of Civil Procedure sections 387, subdivision (b), and 388, this Court should grant the People leave to intervene in one of the consolidated actions, Case Number MSN14-0312.
This motion is based upon this notice, the People's Petition, the accompanying Memorandum of Points and Authorities and the Declaration of Sarah Morrison in support of motion, any matters of which the Court may take judicial notice, the pleadings on file with the Court in this action, and such other matters which may be brought to the attention of this Court before or during the hearing of this motion.

Dated: May 15, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of the State of California
SALLY MAGNANI
Senior Assistant Attorney General

[Sarah E. Morrison]

SARAH E. MORRISON
Supervising Deputy Attorney General
Attorneys for the People
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR INTERVENTION

INTRODUCTION

Pursuant to Code of Civil Procedure section 387, subdivision (b), the People of the State of California ex rel. Kamala D. Harris, Attorney General ("People") seek to intervene in one of the above-captioned consolidated actions, Case Number MSN14-0312, filed under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq. and other state laws. The People's proposed Petition for Writ of Mandate in Intervention ("People's Petition") is attached hereto as Exhibit 1. The People have an unconditional right to intervene in actions in which facts are alleged concerning pollution and adverse environmental effects that could affect the public in general. (Gov. Code, § 12606.) The petitioners¹ in the consolidated proceedings allege that a new large railyard approved by Respondents the City of Los Angeles, the City Council of the City of Los Angeles, the Los Angeles Harbor Department, and the Los Angeles Board of Harbor Commissioners (collectively, "Respondents") will result in air pollution and other adverse environmental effects to the nearby communities. Therefore, the People should be granted leave to file the People's Petition.

STATEMENT OF ALLEGED FACTS

On or about June 5 and 7, 2013, Petitioners filed seven petitions for writs of mandate, including the Petition for Writ of Mandate and Complaint for Injunctive Relief in Case Number MSN14-0312 ("Initial Petition"), against Respondents in Los Angeles County Superior Court. The petitions were consolidated for limited purposes, and the consolidated cases were transferred to this Court in January 2014. The Initial Petition alleges that Respondents violated CEQA by approving a new railyard, known as the Southern California International Gateway project

¹ The petitioners in these consolidated actions include the South Coast Air Quality Management District; the City of Long Beach; the Long Beach Unified School District; Natural Resources Defense Council; East Yard Communities for Environmental Justice; Coalition for Clean Air; Century Villages at Cabrillo; Elena Rodriguez; Evelyn Deloris Knight; [other environmental petitioners]; Fast Lane Transportation, Inc.; California Cartage Company, Inc.; Three Rivers Trucking Inc.; Los Angeles Harbor Grain Terminal; and San Pedro Forklift, Inc. (collectively, "Petitioners").
("SCIG railyard" or "Project"). The SCIG railyard will be an "inter-modal" facility at which cargo containers are transferred from trucks to trains. The Project Site is located approximately four miles from the Port of Los Angeles and Port of Long Beach ("Ports"), and is less than 1,000 feet from the West Long Beach residential community in the adjacent City of Long Beach, including schools, a park, a day care center, residences, and the Villages of Cabrillo, a housing community for veterans and homeless individuals and families. The residential community of West Long Beach is already overburdened with air pollution, traffic and noise from trucks, trains, and ships accessing the Ports. According to the California Air Resources Board ("ARB"), the people living in communities near the Ports are at increased risk of health effects, including cancer, asthma attacks, pulmonary disease, cardiovascular disease, and other health effects from air pollution related to the Ports.\(^2\)

The SCIG railyard, as proposed, will significantly increase the levels of air pollutant emissions, such as particulate matter and nitrogen dioxide, impacting the overburdened communities near the Ports, including the West Long Beach community. The air pollution from the SCIG railyard combined with the other port-related emissions poses a serious increased risk of cancer, respiratory illnesses, and other adverse health effects to the people who reside, work and attend school in the West Long Beach community. The Initial Petition alleges that the environmental impact report for the Project failed to adequately analyze the Project's individual and cumulative impacts, including impacts on air quality, transportation and traffic, noise, climate change, inducement of growth, and aesthetics. (Initial Petition, ¶¶ 9 and 54.) The Initial Petition also alleges that Respondents failed to adequately analyze feasible mitigation measures and alternatives to mitigate the Project's significant environmental impacts, including air quality, climate change, and health impacts. (Initial Petition, ¶¶ 9 and 54.)

The People move to intervene to ensure that Respondents disclose and mitigate the impacts of the SCIG Project in a manner that fully complies with CEQA.

THE PEOPLE SHOULD BE PERMITTED TO INTERVENE 
AS A MATTER OF RIGHT

The standard for intervention as a matter of right is contained in Code of Civil Procedure section 387, subdivision (b): “If any provision of law confers an unconditional right to intervene ..., the court shall, upon timely application, permit that person to intervene.”

The People, through the Attorney General, have an unconditional right to intervene in the consolidated actions pursuant to Government Code section 12606, which provides that: “The Attorney General shall be permitted to intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects which could affect the public generally.” (Emphasis added.) Government Code section 12606 is to be read in conjunction with Public Resources Code section 21167.7, which requires service of all CEQA pleadings on the Attorney General. CEQA’s service requirement “has the effect of informing that office of the action and permits the Attorney General to lend its power, prestige and resources to secure compliance with CEQA and other environmental laws ...” (Schwartz v. City of Rosemead (1984) 155 Cal.App.3d 547, 561.) It is well established that “the Attorney General can intervene in an action to enforce compliance with CEQA.” (Id. at p. 556, fn.7.)

As noted above, the Initial Petition alleges that Respondents violated CEQA, and that the Project will result in air pollution and other adverse environmental impacts. This action clearly constitutes a “judicial ... proceeding in which facts are alleged concerning pollution or adverse environment effects which could affect the public generally.” (See Gov. Code, § 12606.) The Attorney General, on behalf of the People, therefore has an unconditional right to intervene.

THE MOTION TO INTERVENE IS TIMELY

The People filed a timely motion for leave to intervene under Code of Civil Procedure section 387, subdivision (b). The People have met the standard of timeliness given that the consolidated proceedings are in an early phase and the parties will not be prejudiced by the People’s intervention at this stage in the proceedings.

PEOPLE’S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE 
(Consolidated Case No. MSN14-1300)
A. Standard for Timeliness.

Code of Civil Procedure section 387, subdivision (b) provides, in relevant part: "If any provision of law confers an unconditional right to intervene . . . the court shall, upon timely application, permit that person to intervene." In determining whether the standards for intervention have been met, courts have held that California Code of Civil Procedure section 387 "should be liberally construed in favor of intervention." (Lindelli v. Town of San Anselmo (2006) 139 Cal.App.4th 1499, 1505; Lincoln National Life Ins. Co. v. State Bd. of Equalization (1994) 30 Cal.App.4th 1411, 1423.)

Section 387 does not place a statutory time limit on motions to intervene. (Noya v. A.W. Coulter Trucking (2006) 143 Cal.App.4th 838, 842.) However, "it is the general rule that a right to intervene should be asserted within a reasonable time and that the intervener must not be guilty of an unreasonable delay after knowledge of the suit." (Allen v. California Water & Tel. Co. (1947) 31 Cal.2d 104, 108 [complaint in intervention untimely where filed 11 years after the commencement of the action, and several years after the trial.]) Depending on the circumstances of the case, leave to intervene may even be granted after judgment has been rendered. (Mallick v. Superior Court (1979) 89 Cal.App.3d 434, 437 ["intervention is possible, if otherwise appropriate, at any time, even after judgment."].) Intervention is timely even when the statute of limitations has run on the claims alleged in the complaint in intervention. (Mar v. Saki Internat. Corp. (1992) 9 Cal.App.4th 1780, 1785 [the running of the statute of limitations "was to be calculated not from the filing of the complaint in intervention, but from the date the underlying complaint was filed."].)

B. The People's Intervention Will Not Prejudice the Parties.

Intervention is not untimely unless any party opposing intervention can show any prejudice from any delay attributable to filing of a motion to intervene. (Truck Ins. Exchange v. Superior Court ("Truck Ins. Exchange") (1997) 60 Cal.App.4th 342, 351.) In Truck Ins. Exchange, the court held that a motion to intervene in a lawsuit, which had been pending for four years, was
timely when real parties in interest had not shown any prejudice “other than being required to prove their case.” (Ibid.)

Here, the consolidated actions are still in an early phase. Respondents have not filed answers, motions, or other pleadings in response to the petitions. The parties stipulated that responsive pleadings to the petition are due within 30 days after the preparation of the administrative record. (Declaration of Sarah Morrison in Support of People’s Motion for Leave to Intervene (“Morrison Decl.”), ¶ 6.) The administrative record has not yet been certified. (Morrison Decl.”), ¶ 7.) Neither a briefing schedule nor the date for a hearing on the petitions has been set in this matter. (Morrison Decl., ¶ 8.)

The People’s intervention in this action will not prejudice the parties. As in the Truck Ins. Exchange case, here Respondents and Real Parties in Interest cannot show any prejudice from the timing of the People’s motion to intervene.

C. The People Are Seeking to Intervene Within a Reasonable Time.

In June 2013, Petitioners notified the California Attorney General’s Office of their petitions in compliance with Public Resources Code section 21167.7. (Morrison Decl., ¶ 4.) Since receiving notice of the petitions, the People have spent considerable time and effort reviewing the seven petitions and the environmental impact report for the Project; evaluating and verifying the factual and legal allegations in the petitions, communicating and meeting with the parties to fully understand the arguments on both sides, and preparing pleadings seeking to intervene in the action. (Morrison Decl., ¶ 10.) Given that the documents relevant to this case are voluminous and the factual and legal issues involved in this matter are complicated, the People did not unreasonably delay filing the motion for leave to intervene. The Attorney General now seeks to exercise her unconditional right to intervene at the early stages of this case as the State’s chief law officer and on behalf of the People of California in order to enforce CEQA and protect the public interest. There has been no unreasonable delay in the filing of the People’s Motion for Intervention.
CONCLUSION

The People have an unconditional right to intervene in the consolidated actions, including Case Number MSN14-0312, and, therefore, the Court should grant the People leave to file the People’s Petition.

Dated: May 15, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
SALLY MAGNANI
Senior Assistant Attorney General

[Signature]

SARAH E. MORRISON
Supervising Deputy Attorney General
Attorneys for People
DECLARATION OF SARAH MORRISON

I, Sarah Morrison, declare as follows:

1. I am a Supervising Deputy Attorney General with the California Attorney General’s Office in Los Angeles. I have been assigned to represent the People of the State of California, ex rel. Kamala D. Harris, Attorney General (“People”) in the above-entitled consolidated actions.

2. I make the following statements based upon personal knowledge of the facts and, if called as a witness, I could competently testify to these statements.

3. The petitioners in these consolidated actions include the South Coast Air Quality Management District; the City of Long Beach; the Long Beach Unified School District; Natural Resources Defense Council; East Yard Communities for Environmental Justice; Coalition for Clean Air; Century Villages at Cabrillo; Elena Rodriguez; Evelyn Deloris Knight; [other environmental petitioners]; Fast Lane Transportation, Inc.; California Cartage Company, Inc.; Three Rivers Trucking Inc.; Los Angeles Harbor Grain Terminal; and San Pedro Forklift, Inc. (collectively, “Petitioners”.) Petitioners filed seven petitions for writ of mandate and complaints for declaratory relief against Respondents the City of Los Angeles, the City Council of the City of Los Angeles, the Los Angeles Harbor Department, and the Los Angeles Board of Harbor Commissioners (collectively, “Respondents”) in Los Angeles County Superior Court. The petitions alleged violations of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq.


5. The parties stipulated to limited consolidation of the petitions, and the court entered an order approving limited consolidation of the cases. In January 2014, the consolidated cases were transferred to this Court.

6. The consolidated actions are still in an early phase. Respondents have not filed answers, motions, or other pleadings in response to the petitions. I have been informed by
Petitioners’ counsel the parties stipulated that responsive pleadings to the petition are due within 30 days after the preparation of the administrative record.

7. The deadline for certification of the administrative record is currently May 17, 2014. I have been informed by Petitioners’ counsel that the administrative record is not certified, and the parties are circulating a stipulation for a 60 day extension of the certification deadline.

8. A case management conference in the consolidated actions is scheduled for June 12, 2014. I have been informed by Petitioners’ counsel that neither a briefing schedule nor the date for a hearing on the petitions has been set in this matter.

9. Given the early stage of the proceedings, the People’s intervention in this action will not prejudice the parties.

10. Since receiving notice of the petitions, the Attorney General’s Office has spent considerable time and effort reviewing the seven petitions, evaluating and verifying the factual and legal allegations in the petitions, communicating and meeting with the parties to fully understand the arguments on both sides, and preparing pleadings seeking to intervene in the action. The documents relevant to this case are voluminous and the factual and legal issues involved in this matter are complicated. As a result, the People did not unreasonably delay filing their motion for leave to intervene.

I, Sarah Morrison, declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 15, 2014 at Los Angeles, California.

SARAH E. MORRISON
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Attorney General of California  
SALLY MAGNANI  
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Attorneys for Intervenor People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

FAST LANE TRANSPORTATION, INC., a California corporation,  

Petitioner,  

v.  

CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; PORT OF LOS ANGELES; LOS ANGELES BOARD OF HARBOR COMMISSIONERS; and DOES 1 through 50, inclusive,  

Respondents

CASE NO. CIV MSN14-0300 (Consolidated with Case Nos. CIV MSN14-0308, MSN14-0309, MSN14-0310, MSN14-0311, MSN14-0312, MSN14-0313)

PEOPLE’S PETITION FOR WRIT OF MANDATE IN INTERVENTION

[CEQA CLAIM]


Dept: 33  
Judge: Honorable Steve K. Austin  
Assigned for All Purposes  
Action Filed: June 5 and 7, 2013

AND RELATED CONSOLIDATED CASES.

PEOPLE’S PETITION FOR WRIT OF MANDATE IN INTERVENTION (MSN14-1300)
INTRODUCTION

1. The People of the State of California, acting by and through Attorney General Kamala D. Harris ("the People"), intervene as of right in the above-captioned consolidated actions, Case Number MSN14-0312, pursuant to Government Code section 12606. The People challenge the adequacy of the approvals by Respondents the City of Los Angeles, the City Council of the City of Los Angeles, the City of Los Angeles Harbor Department, and the Los Angeles Board of Harbor Commissioners (collectively, "Respondents") of a new large railyard that will be operated for 50 years by Real Parties in Interest BNSF Railway Company and Burlington Northern Santa Fe Railway Company (collectively, "BNSF"), under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq.

2. The new railyard, called the Southern California International Gateway Project ("SCIG railyard" or "Project"), will be an "inter-modal" facility at which cargo containers are transferred from trucks to trains. The Project Site is located approximately four miles from the Port of Los Angeles and Port of Long Beach ("Ports"), and is located less than 1,000 feet from sensitive land uses in the West Long Beach community in the adjacent City of Long Beach, including schools, a park, a day care center, residences, and the Villages of Cabrillo, a housing community for veterans and homeless individuals and families. The residential community of West Long Beach is already overburdened with air pollution, traffic and noise from trucks, trains, and ships accessing the Ports.

3. The Ports currently handle over 30% of all containerized trade in the United States. The combined emissions from trucks, locomotives, ships, and other cargo-moving equipment already operating at the Ports result in high levels of air pollutants, including diesel particulate matter and nitrogen dioxide ("NO₂"). As a result of these emissions, the Ports are one

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1 The petitioners in these consolidated actions include the South Coast Air Quality Management District; the City of Long Beach; the Long Beach Unified School District; Natural Resources Defense Council; East Yard Communities for Environmental Justice; Coalition for Clean Air; Century Villages at Cabrillo; Elena Rodriguez; Evelyn Deloris Knight; [other environmental petitioners]; Fast Lane Transportation, Inc.; California Cartage Company, Inc.; Three Rivers Trucking Inc.; Los Angeles Harbor Grain Terminal; and San Pedro Forklift, Inc. (collectively, "Petitioners").
of the biggest sources of diesel particulate material in California. According to the California Air 
Resources Board ("ARB"), the people living in communities near the Ports are at increased risk 
of health effects, including cancer, asthma attacks, pulmonary disease, cardiovascular disease, 

4. Railyards are also a major source of air pollutants, including diesel particulate matter and NO\textsubscript{2}. In particular, "inter-modal" (truck to train) railyards, like the SCIG railyard, cause heavy truck traffic with associated air pollutant emissions. ARB recommends that a railyard not be located within 1,000 feet of sensitive land uses, such as schools, parks, day care centers, and residences.

5. The SCIG railyard will exacerbate the air quality problems for the overburdened West Long Beach community. At full capacity, the Project will daily result in thousands of trucks coming from the Ports delivering containerized cargo to the SCIG railyard where the containers will be transferred onto trains with multiple locomotives. The trains will move and idle on tracks located close to (in some places less than 200 feet) residences and schools in West Long Beach. All trucks accessing the SCIG railyard must travel on a ramp within a few hundred feet of the entrance to the Villages of Cabrillo.

6. The existing operations on the Project Site, which will be displaced by the SCIG railyard, include port-related transportation services that generate truck trips. However, at full capacity in 2023, the SCIG railyard will result in more than one million new one-way truck trips and approximately 2,500 new round-trip train trips each year in comparison to existing operations.

7. As a result, the SCIG railyard, as proposed, will significantly increase the levels of air pollutant emissions, such as particulate matter and NO\textsubscript{2}, impacting the overburdened communities near the Ports, including the West Long Beach community. The air pollution from the SCIG railyard combined with the other port-related emissions poses a serious increased risk
of cancer, respiratory illnesses, and other adverse health effects to the people who reside, work
and attend school in the West Long Beach community.

8. Under CEQA, a public agency must fully analyze and disclose all significant
effects on the environment that may occur if the project is approved, and also analyze and adopt
all feasible mitigation measures and/or alternatives that could minimize the project’s significant
impacts on the environment. (Pub. Resources Code, §§ 21102, 21061, 21081, 21100, 21151.)

9. Respondents’ approval of the SCIG railyard violated CEQA by failing to
adequately and fully analyze the direct, indirect, and cumulative impacts of the Project. For
example, the EIR’s air quality analysis overestimates the existing baseline of air pollutant
emissions and underestimates the air pollutant emissions from the SCIG railyard. As a result, the
EIR fails to adequately disclose the full extent of the Project’s impacts and the health risks to the
already overburdened West Long Beach community. Respondents also failed to adopt all feasible
mitigation measures that could lessen the pollution burden on the residents of West Long Beach.
In particular, Respondents did not adopt feasible and enforceable measures to reduce air quality
impacts, including allowing only zero-emission trucks to access the SCIG railyard, and requiring
locomotives accessing the SCIG railyard to meet EPA’s Tier 4 low-emission engine standards.

10. Under CEQA, a public agency may not approve a project that may result in
significant effects on the environment, unless the agency finds that there are no additional feasible
mitigation measures or alternatives that could lessen or avoid the project’s impacts and the
agency makes findings, supported by substantial evidence, that specific overriding considerations
outweigh the project’s significant effects. (Pub. Resources Code, §§ 21081, 21081.5.)

11. The statement of overriding considerations adopted by Respondents to approve
the SCIG Project violated the public information and informed decision making purposes of CEQA
by not clearly disclosing that the negative health and quality of life impacts of the Project will be
borne by the students and residents in the adjacent City of Long Beach, while the expected
benefits of jobs and tax revenues from the Project will accrue to the region as a whole. In
addition, as discussed above, Respondents underestimated the Project’s impacts, and thus failed to
fully disclose the Project's adverse impacts; as a result, Respondents' findings of overriding
considerations are not supported by substantial evidence. Respondents also failed to adopt all feasible
mitigation to reduce or avoid the Project's adverse impacts, and therefore the statement of overriding
considerations that all feasible mitigation was adopted is not supported by substantial evidence.

12. Therefore, the People intervene in support of Petitioners in one of the above-captioned consolidated cases, Case Number MSN14-0312, alleging that Respondents' approval of
the SCIG railyard violates CEQA. The People request that the Court set aside Respondents' approvals relating to the SCIG railyard, and require Respondents to prepare an environmental
impact report that adequately analyzes the adverse environmental impacts of the Project, and
adopts all feasible mitigation measures and/or alternatives to avoid or reduce those impacts.

13. The People recognize the importance of the Ports to the economy and the need to
develop infrastructure to support increased port-related goods movement. The Ports are a huge
regional and national economic engine, and the demand for containerized cargo moving through
the Ports is estimated to double by 2025. As the Ports have themselves acknowledged, the Ports'
ability to accommodate the projected growth in trade will depend upon their ability to address
adverse environmental impacts that result from such trade. The Ports have expressed their intent
to accelerate efforts to reduce air emissions and health risks to the neighboring communities
while allowing the Ports' development to continue. The People intervene to ensure that
Respondents' mitigation with respect to the Project is implemented in a manner that fully
complies with CEQA.

ALLEGATIONS SUPPORTING INTERVENTION

14. Pursuant to Government Code section 12606, the People, acting through the
Attorney General, intervene in Case Number MSN14-0312, which alleges facts concerning
pollution and adverse environmental effects. The Attorney General has an unconditional right
pursuant to Government Code section 12606 to "intervene in any judicial or administrative
proceeding in which facts are alleged concerning pollution or adverse environmental effects

3 San Pedro Bay Ports Clean Air Action Plan 2010 Update, p. 19, available at
http://www.cleanairactionplan.org/
which could affect the public generally.” Intervention is timely in that the administrative record has not yet been certified. Neither a briefing schedule nor a hearing date has yet been set. No prejudice will occur to the existing parties from this intervention.

PARTIES

15. The Attorney General, as the chief law officer of the State of California, has broad independent powers under the California Constitution and the California Government Code to participate in all legal matters in which the State is interested, and she has special and explicit statutory authority to participate in cases involving the protection of California’s environment. (Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612.) The Attorney General also has a unique and important role in the enforcement of CEQA, as recognized by statute. (Pub. Resources Code, §§ 21167.7, 21177, subd. (d).)

16. Respondent City of Los Angeles (“City”) is and was, at all relevant times, a charter city and a political subdivision of the State of California organized and existing under Government Code sections 34000 et seq. The City is a local governmental agency charged with regulating and controlling local land use and development within its territory in compliance with provisions of state law, including CEQA. The City is the lead agency for the Project under Public Resources Code section 21067.

17. The City Council of the City of Los Angeles (“City Council”) is the legislative body of the City of Los Angeles. The City Council is responsible for hearing administrative appeals for decisions made by individual city departments, making certain land use decisions, and ensuring its decisions are made in compliance with applicable laws.

18. Respondent Los Angeles Harbor Department (“LAHD”) is and was, at all relevant times, an independent department of the government of the City of Los Angeles. LAHD is responsible for operating the lands in the Harbor District, and for ensuring that land use decisions are made in compliance with applicable laws.

19. Respondent Los Angeles Board of Harbor Commissioners (“BOHC”) is, and was, at all relevant times, a local governmental body created by the City of Los Angeles Charter, with
possession, management and control of all navigable waters, and all tidelands and submerged
lands comprising the Port of Los Angeles. It is charged with the duty of ensuring compliance
with applicable laws.

20. The People are informed and believe and therefore allege that Real Party in
Interest BNSF Railway Company is a corporation organized and existing under the laws of the
State of Delaware, and doing business in the State of California. BNSF Railway Company is a
project applicant and proposed lessee of the SCIG Project.

21. Real Party in Interest Burlington Northern Santa Fe Railway is also identified as a
project applicant and therefore named as a real party in interest.

22. DOES 1 through 10, inclusive, are persons whose names and identities are
unknown to the People at this time, and the People therefore sue them under these fictitious
names. The People will amend this petition to allege the true names and capacities of DOES 1
through 10 as soon as they are discovered.

JURISDICTION AND VENUE

23. Pursuant to Public Resources Code sections 21168 and 21168.5 and California
Code of Civil Procedure section 1085 and 1094.5, this Court has jurisdiction over this matter.

24. Venue is appropriate in this judicial district pursuant to the stipulation of the
parties and the order of the Court. (Code of Civ. Proc., §§ 392, 394.)

25. The People have satisfied all statutory prerequisites to filing this action.

STATUTORY BACKGROUND

26. Under CEQA, where a proposed project may have a significant adverse effect on
the environment, the lead agency must prepare, circulate, and certify an environmental impact
report. (Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d).) The environmental
impact report must fully analyze and disclose the significant effects on the environment that
would occur if the project is approved, and also propose all feasible measures that mitigate or
avoid the project’s significant impacts on the environment. (Pub. Resources Code, §§ 21002,
21081.) If the agency finds that no further feasible mitigation or alternatives could lessen or
avoid the project's impacts, and the agency proposes to approve the project, then the agency must
issue a statement of overriding considerations supported by substantial evidence in the record
stating the specific reasons that economic, legal, social, technological, or other benefits that
outweigh the project's environmental impacts. (Pub. Resources Code, §§21081, 21081.5.)

27. Code of Civil Procedure section 1094.5, subdivision(b) provides that a reviewing
court's scope of inquiry into the validity of any final administrative order or decision made as a
result of a proceeding in which by law a hearing is required to be given shall extend to: whether
the agency proceeded without or in excess of its jurisdiction; or whether there was any prejudicial
abuse of discretion. Abuse of discretion is established if Respondents have not proceeded in the
manner required by law, the order or decision is not supported by the findings, or the findings are
not supported by the evidence. (Code Civ. Proc., § 1094.5, subd. (b).)

28. In proceedings brought under Code of Civil Procedure section 1094.5, the court
may stay the operation of the administrative order or decision pending the judgment. (Code Civ.
Proc. § 1094.5, subd. (g).)

29. Under CEQA, actions to void a determination, finding or decision of a public
agency, made as a result of a proceeding in which by law a hearing is required to be given, based
on CEQA violations, shall be in accordance with Code of Civil Procedure section 1094.5, and the
court shall determine whether the act or decision is supported by substantial evidence in light of
the whole record. (Pub. Resources Code, § 21168.)

30. Public Resources Code section 21168.9, subdivision (a), states that if a court finds
that any determination, finding, or decision of a public agency has been made without compliance
with CEQA, the court shall enter an order that includes one or more of the following:

(1) A mandate that the determination, finding, or decision be voided by the public
agency, in whole or in part.

(2) If the court finds that a specific project activity or activities will prejudice the
consideration or implementation of particular mitigation measures or alternatives
to the project, a mandate that the public agency and any real parties in interest
suspend any or all specific project activity or activities, pursuant to the
determination, finding, or decision, that could result in an adverse change or
alteration to the physical environment, until the public agency has taken any
actions that may be necessary to bring the determination, finding, or decision into compliance with [CEQA].

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding or decision into compliance with [CEQA].

FACTUAL BACKGROUND

31. Proposed Project. The Project involves the construction and operation of a new railyard by BNSF that would handle containerized international goods transported by trucks from the Ports. At the SCIG railyard, containers of imported goods will be stored onsite or transferred from trucks onto trains going to destinations throughout the nation. At full capacity in 2023, the SCIG Project will result in approximately 5,500 one-way truck trips to and from the SCIG railyard each day and 2 million one-way truck trips transporting 1.5 million forty-foot containers annually. The Project will also result in 8 round-trip train trips each day and 2,880 round-trip train trips accessing the SCIG railyard annually. The SCIG railyard will operate 24 hours a day, seven days a week, 360 days a year.

32. Existing Conditions. The Project Site consists of 185 acres of land located approximately four miles north of the Ports. The Project Site includes approximately 103 acres of land in the City of Los Angeles owned by Respondents, which will be leased to BNSF for 50 years. The other portions of the Project Site will be located on land that BNSF plans to purchase or lease in the adjacent cities of Carson and Long Beach. The Project Site is bounded generally by Sepulveda Boulevard to the north, the Pacific Coast Highway to the south, the Dominguez Channel to the west, and the Terminal Island Freeway to the east. The City of Long Beach is located to the east of the SCIG Project Site, the Wilmington community is located to the west of the Project, and the City of Carson is located to the west and north of the Project Site.

33. The West Long Beach residential community is located less than 1,000 feet to the east of the Project Site, and includes single family residences, Hudson K-8 School, Hudson Park, Bethune School, Cabrillo High School, the Cabrillo Child Development Center (daycare center), and the Villages of Cabrillo, a 24 acre campus operated by a non-profit to provide
housing, medical, education, childcare, and other services to veterans and homeless individuals and families.

34. The existing businesses on the Project Site, which will be displaced by the SCIG railyard, include operations engaged in warehousing and goods transportation, container and truck maintenance, servicing, and storage, rail services, and industrial uses.

35. The communities near the Ports are already exposed to high levels of harmful air pollutant emissions, including diesel particulate matter and NO₂ from current operations at the Ports, including trucks, trains, and ships accessing the Ports, as well as from freeways and port-related industries in the area. The South Coast Air Basin ("Basin"), which encompasses the Ports, has some of the worst air quality in the nation. The Basin is currently designated by the United States Environmental Protection Agency ("EPA") as being in nonattainment of the federal Clean Air Act's national ambient air quality standards for ozone and particulate matter. According to ARB, diesel particulate matter emissions from the Ports are a major contributor to diesel particulate matter in the Basin. Diesel particulate matter is a carcinogen identified by ARB as a toxic air contaminant. NO₂ reacts in the presence of sunlight to form ozone. These pollutants also cause asthma and severe respiratory effects.

36. In order to address the Ports' air quality problems, the Ports, EPA, ARB, and Petitioner South Coast Air Quality Management District collectively adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006. The CAAP was updated in 2010 ("CAAP Update.") The CAAP Update states that "[t]he economic benefits of the ports are felt throughout the nation; however, the environmental impacts of trade are more locally concentrated." (CAAP Update, p. 2.) The CAAP is designed "to develop and implement strategies and programs necessary to reduce air emissions and health risks while allowing port development to continue." (CAAP Update, p. 2.) The CAAP includes measures to reduce port-related emissions and health risks "in highly-impacted communities located proximate to port sources and throughout the residential areas in the port region." (CAAP Update, p. ES-3.)

Such measures include strategies for zero-emission trucks to transport cargo to and from the Ports, low emission locomotives meeting EPA’s Tier 4 engine emission standards, and maximizing of new railyards located at the Ports (“on-dock rail”).

37. **SCIG EIR.** On September 23, 2011, Respondents issued a draft EIR for the SCIG Project. Petitioners and others submitted comments identifying numerous deficiencies in the draft EIR. On September 27, 2012, Respondents issued a recirculated draft EIR for the SCIG Project. Petitioners and others again submitted comments identifying numerous deficiencies in the recirculated draft EIR.

38. Petitioners and others commented that approval of the SCIG Project would result in significant health risks from air pollutants and other environmental impacts to the communities near the SCIG Project, including the West Long Beach community, already exposed to excessive levels of air pollutants and associated health risks from port-related emissions.

39. Petitioners and others commented that Respondents violated CEQA by failing to (a) conduct an adequate analysis of the environmental and public health impacts of the SCIG project; (b) adopt effective, enforceable mitigation measures to reduce the environmental impacts on the already overburdened communities near the SCIG Project; and (c) consider a full range of alternatives that would create reduced environmental impacts compared to the SCIG Project.

40. Nevertheless, Respondents approved the SCIG Project without complying with CEQA’s requirements to adequately analyze the Project’s direct, indirect, and cumulative impacts; to adequately analyze and adopt all feasible mitigation measures; or to consider a reasonable range of alternatives.

41. For example, the EIR fails to fully analyze the significant impacts of the Project, because the EIR underestimates the Project’s significant impacts. The EIR improperly assumes, in the air quality analysis, that the Project will result in a reduction in emissions because trucks will be diverted from the existing BNSF Hobart railyard in Commerce to the
SCIG railyard. The EIR includes in the analysis of existing conditions and the no project alternative the emissions from the trucks going from the Ports to the Hobart railyard, even though the trucks are not related to current operations at the Project Site. The EIR completely omits these same trucks when calculating the emissions from the Project, based on the assumption that 100% of the trucks now going to Hobart railyard will be diverted to the SCIG railyard. Yet the Project description does not limit or prohibit future truck traffic to the Hobart railyard after the SCIG Project is operating. In fact, evidence in the record indicates that the volume at the Hobart railyard will increase dramatically by 2023, even with the operation of SCIG. By not comprehensively evaluating truck trips going to and from the Hobart railyard, and by only including the Hobart railyard trucks in the existing conditions and no project alternative, the EIR underestimates the Project’s impacts. As a result, the EIR does not adequately analyze the exposure to air pollutants (including diesel particulate matter, NO₂, and greenhouse gases) and the health risks affecting the people in the already overburdened communities in the vicinity of the SCIG Project.

42. The EIR also fails to fully analyze the cumulative impacts by not evaluating the Project in light of the expected increase in air pollutant emissions associated with the proposed expansion of the Union Pacific Railroad’s railyard (known as the “Intermodal Container Transfer Facility” or “ICTF”) adjacent to the SCIG Project Site. Under CEQA, Respondents are required to evaluate whether the Project’s impacts are cumulatively considerable when viewed together with the environmental impacts from past, present, and probable future projects. (Cal. Code Regs., tit. 14, § 15130, subd. (a).) Although the EIR includes a list of projects in the Project vicinity, the EIR fails to provide a detailed analysis of the combined impacts of the SCIG railyard together with the other projects.

43. The EIR also fails to adequately disclose and analyze the greenhouse gas emission (“GHG”) impacts of the Project. In order to stabilize our existing climate, we must substantially and continuously reduce total GHG emissions in the coming decades. Consistent with the science, state law and policy, the California Global Warming Solutions Act of 2006,
known as AB 32, and the Governor’s Executive Orders S-03-05 and B-16-2012, call for steep
reductions in GHG emissions through 2050. It is therefore important for an EIR to accurately
account for projected GHG emissions. The EIR admits that at full operation in 2023, the
Project’s GHG emissions will exceed the GHG emissions from existing conditions at the Project
Site, but the EIR underestimates Project GHG emissions by failing to include GHG emissions
from the continued operation of the Hobart railyard.

44. In addition, the EIR is misleading in its statements about consistency with state,
regional or local plans for the reduction or mitigation of GHG emissions. The EIR concludes
that the Project is consistent with ARB’s AB 32 Scoping Plan, because the Project will increase
fuel efficiency and decrease GHG emissions by shifting truck trips from the Hobart railyard to
the SCIG railyard. However, the EIR ignores the GHG emissions from the continued operation
of the Hobart railyard. Therefore, the EIR fails as an informational document, and the EIR’s
conclusion regarding the Project’s consistency with plans and policies to reduce GHG
emissions is not supported by substantial evidence in the record.

45. The EIR also violates CEQA by improperly rejecting feasible and enforceable
mitigation measures to reduce or avoid the significant impacts of the SCIG railyard, including
impacts on air quality and GHG emissions. Such feasible mitigation measures include
requirements for zero-emission trucks, low-emission locomotives meeting EPA’s Tier 4 engine
emission standards, and reconfiguration of the access ramp to the SCIG railyard away from the
Villages of Cabrillo.

46. The EIR also violates CEQA by proposing mitigation measures that are not
enforceable or that improperly defer mitigation, including Mitigation Measure AQ-9 and
Mitigation Measure AQ-10.

47. The EIR also fails to consider, or improperly rejects, feasible alternatives to the
Project. The EIR analyzes only two alternatives, a reduced volume alternative and a no-project
alternative. Other feasible alternatives, for example, a zero-emission container movement
alternative, are rejected without substantial evidence of infeasibility.
48. **Approval and Appeal of the SCIG Project.** Respondents issued a final EIR in February 2013. On or about March 7, 2013, BOHC certified the EIR for the SCIG Project (Resolution No. 13-7451.) On or about March 21, 2013, BOHC approved a Site Preparation Access Agreement ("Site Agreement") that authorizes BNSF to use and occupy Respondents' property to develop, prepare, coordinate and construct a railyard intermodal container transfer facility. BOHC also approved and a lease for the SCIG Project (Permit No. 901") that authorizes BNSF to operate and maintain the new railyard on Respondents' land for 50 years.

49. Respondents issued a statement of overriding considerations to approve the SCIG Project despite its significant impacts. In adopting this statement, Respondents failed to comply with CEQA's public information and informed decision making purposes because they did not clearly disclose that the negative health and quality of life impacts of the Project will be borne by the adjacent communities in City of Long Beach, while the expected benefits from the Project will accrue to the region as a whole. In addition, as discussed above, Respondents underestimated the Project's impacts, and thus failed to fully disclose the Project's adverse impacts; as a result, Respondents' findings of overriding considerations are not supported by substantial evidence. Because Respondents also failed to adopt all feasible mitigation to reduce or avoid the Project's adverse impacts, Respondents' statement of overriding considerations is not supported by substantial evidence.

50. Petitioners timely appealed BOHC's approvals for the SCIG Project to the City Council.

51. On or about May 8, 2013, the City Council heard Petitioners' appeals and affirmed BOHC's decisions approving the SCIG Project, including the Site Agreement, the certification of the EIR for the Project, and Permit No. 901.

52. On or about May 9, 2013, Respondents filed a Notice of Determination for approval of the SCIG Project.

53. On or about June 5 and 7, 2013, Petitioners timely filed petitions for writ of mandate and complaints for declaratory relief against Respondents in Los Angeles County
Superior Court, alleging, among other things, that Respondents violated CEQA by failing to evaluate the potential environmental impacts of the Project before approving the Project. The parties stipulated to limited consolidation of the petitions.

54. In January 2014, the consolidated cases challenging the SCIG Project were transferred to this Court.

FIRST CAUSE OF ACTION
(Violation of CEQA – Failure to Adequately Analyze Impacts
(Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)

55. The allegations in paragraphs 1 through 54 are realleged and incorporated by reference herein as though set forth in full.

56. CEQA mandates that a public agency proposing to approve a project that may have a significant effect on the environment must prepare an environmental impact report that identifies and analyzes all potentially significant adverse effects of a project, including reasonably foreseeable direct, indirect, and cumulative impacts from all phases of the project. (Pub. Resources Code, § 21100; Cal. Code Regs., tit. 14, §§ 15126, 15126.2.)

57. An environmental impact report must evaluate local as well as regional impacts. (Cal. Code Regs., tit. 14, §§ 15125, 15126.2.)

58. Respondents' EIR violates CEQA by failing to adequately analyze the direct, indirect, and cumulative impacts of the SCIG Project on the local community, including impacts to air quality, GHG emissions, health, traffic, and noise.

59. Respondents' actions in failing to adequately evaluate Project's environmental impacts are arbitrary and capricious, a prejudicial abuse of discretion, and/or not in accordance with law. Accordingly, Respondents' approvals of the Project must be set aside under Code of Civil Procedure section 1094.5.
SECOND CAUSE OF ACTION

(Violation of CEQA – Failure to Adopt all Feasible Mitigation Measures and Improper Adoption of Unenforceable or Deferred Mitigation Measures) (Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)

60. The allegations in paragraphs 1 through 59 are realleged and incorporated by reference herein as though set forth in full.

61. CEQA requires a public agency to “mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Resources Code, § 21002.1, subd. (b); Cal. Code Regs., tit. 14, §§ 15021, subd. (a), 15126.4, subd. (a)(2).)

62. A lead agency may not approve a project for which there are significant environmental impacts unless the agency finds that: (a) mitigation measures have been required of the project which avoid or substantially lessen the significant environmental effects, or (b) mitigation measures are found to be infeasible based on substantial evidence. (Cal. Code Regs., tit. 14, § 15091.)

63. CEQA requires that adopted mitigation measures be fully enforceable. (Pub. Resources Code § 21081.6, subd.(b); Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(2).)

64. Although formulation of mitigation measures should not be deferred until some future time, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way. (Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1)(B).)

65. Petitioners and other commenters proposed additional feasible mitigation measures to lessen the Project’s environmental impacts, including, but not limited to, mitigation measures relative to air quality, GHG emissions, health, noise, and traffic impacts.

66. Respondents violated CEQA by failing to adopt all feasible mitigation measures to mitigate or avoid the potential significant impacts of the SCIG Project, and failed to make findings, supported by substantial evidence, that identified mitigation measures were infeasible.

67. Respondents also violated CEQA by adopting mitigation measures that are not enforceable or that improperly defer mitigation.
68. Respondents' actions in failing to adopt all feasible mitigation measures are arbitrary and capricious, a prejudicial abuse of discretion, and/or not in accordance with law. Accordingly, Respondents' approvals of the Project must be set aside under Code of Civil Procedure section 1094.5.

THIRD CAUSE OF ACTION
(Violation of CEQA – Failure to Consider a Reasonable Range of Alternatives and Improper Rejection of Feasible Alternatives)
(Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)

69. The allegations in paragraphs 1 through 68 are realleged and incorporated by reference herein as though set forth in full.

70. An adequate EIR must consider a reasonable range of alternatives to the proposed project. The alternatives must be designed to meet basic project objectives and lessen or avoid significant environmental impacts. (Cal. Code Regs., tit. 14, § 15126.6(a).)

71. A lead agency may not approve a project for which there are significant environmental effects unless it makes findings supported by substantial evidence that alternatives are infeasible. (Cal. Code Regs., tit. 14, § 15091, subd. (a)(3).)

72. Respondents failed to evaluate a reasonable range of project alternatives that were designed to meet basic project objectives and lessen the significant impacts of the Project.

73. Respondents failed to make findings supported by substantial evidence that Project alternatives were infeasible within the meaning of Cal. Code Regs., tit. 14, § 15091, subd. (a)(3).

74. Respondents' actions in failing to consider a reasonable range of alternatives, improperly rejecting feasible alternatives, and failing to approve the environmentally superior alternative, are arbitrary and capricious, a prejudicial abuse of discretion, and/or not in accordance with law. Accordingly, Respondents' approvals of the Project must be set aside under Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.9.
FOURTH CAUSE OF ACTION
(Violation of CEQA – Failure to Support Overriding Considerations
With Substantial Evidence
(Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)

75. The allegations in paragraphs 1 through 74 are realleged and incorporated by
reference herein as though set forth in full.

76. Under CEQA, a public agency may not approve a project with significant effects
on the environment, unless the agency makes findings that specific overriding economic, legal,
social, technological, or other benefits of the project outweigh the significant effects on the
environment. (Pub. Resources Code, § 21081, subd.(b).)

77. A statement of overriding considerations must be supported by substantial
evidence in the record. (Cal. Code Regs., tit. 14 § 15093.)

78. Additionally, a lead agency may not adopt a statement of overriding
considerations for significant project impacts unless all feasible mitigation has been required of
the project, or the agency makes findings, supported by substantial evidence, of the infeasibility
of the mitigation measures. (Cal. Code Regs., tit. 14, § 15091.)

79. Respondents adopted a statement of overriding considerations at the time of
Project approval.

80. Respondents failed to fully disclose the Project’s adverse impacts on the
environment and therefore, Respondents’ findings of overriding considerations lack transparency
and are not supported by substantial evidence.

81. The statement of overriding considerations does not explain, on the basis of
substantial evidence, why the specific significant effects of the Project are outweighed by the
purported policy benefits of the Project. In addition, Respondents’ failure to clearly disclose
that the impacts of the Project will be imposed on the local community while the benefits of the
Project will accrue to the region at large fails to satisfy the public information and informed
decision making requirements of CEQA.

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82. Respondents improperly adopted a statement of overriding considerations when feasible mitigation and alternatives existed to lessen Project impacts. (Cal. Code Regs., tit. 14, § 15092.)

83. By approving the Project when the statement of overriding considerations was not sufficiently transparent, and not supported by substantial evidence in the record, Respondents committed a prejudicial abuse of discretion for which the Project approvals must be set aside. (Pub. Resources Code, § 21168.5.)

84. Respondents’ actions in approving a statement of overriding considerations are arbitrary and capricious, a prejudicial abuse of discretion, and/or not in accordance with law. Accordingly, Respondents’ approvals of the Project must be set aside under Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.9.

**PRAYER FOR RELIEF**

The People pray for judgment as follows:

1. For peremptory or alternative writs of mandate under Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.9:

   a. Directing Respondents to void every determination, finding and/or decision approving the SCIG Project, including, but not limited to, the City Council’s certification of the EIR for the Project and adoption of Findings of Fact, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program for the Project; approval of the Site Preparation and Access Agreement; approval of Permit No. 901 (the 50 year lease of Respondents’ real property); and issuance of the Notice of Determination for the Project;

   b. Directing Respondents, and BNSF to suspend any and all activities pursuant to, or in furtherance of, Respondents’ determination, finding and/or decision related to the Project approval, until Respondents have taken all actions necessary to bring the determination, finding and/or decision into compliance with CEQA; and
c. Directing Respondents to fully comply with the requirements of CEQA with respect to the Project, and take any other specific action that may be necessary to bring Respondents’ determination, finding and/or decision into compliance with CEQA.

2. For costs of this suit;
3. For attorney’s fees as authorized in Code of Civil Procedure section 1021.8 and other provisions of law; and
4. For such other relief as the Court deems just and proper.

Dated: May 15, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
SALLY MAGNANI
Senior Assistant Attorney General

[Signature]

SARAH E. MORRISON
Supervising Deputy Attorney General

Attorneys for Intervenor People of the State of California
DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: FAST LANE TRANSPORTATION, INC., a California corporation v. CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; PORT OF LOS ANGELES; LOS ANGELES BOARD OF HARBOR COMMISSIONERS, et al.

No.: CIV MSN14-0300 (Consolidated with Case Nos. CIV MSN14-0308, MSN14-0309, MSN14-0310, MSN14-0311, MSN14-0312, MSN14-0313)

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member’s direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On May 15, 2014, I served the attached:

PEOPLE’S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SARAH E. MORRISON IN SUPPORT THEREOF

by placing a true copy thereof enclosed in a sealed envelope with the [FED EX Overnight service], addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 15, 2014, at Los Angeles, California.

B. Cabrera
Declarant

Signature
SERVICE LIST

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City of Carson
PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

I am a citizen of the United States and a resident of Alameda County. I am an attorney licensed to practice in the State of California and am not a party to the within above titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On September 29, 2014, I served the within LETTER OF APPELLANTS TOWN OF ATHERTON ET AL. OPPOSING REQUESTS FOR DEPUBLICATION on the parties listed on the attached service list by placing true copies thereof enclosed in sealed envelopes with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as shown on the attached service list.

I, Stuart M. Flashman, hereby certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on September 29, 2014.

Stuart M. Flashman