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**AGENDA FOR THE CONCURRENT ADJOURNED REGULAR MEETINGS
OF THE CITY COUNCIL OF THE CITY OF COMMERCE AND
THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION
CITY HALL EMERGENCY OPERATIONS CENTER
2535 COMMERCE WAY, COMMERCE, CALIFORNIA**

TUESDAY, JANUARY 31, 2012 – 5:00 P.M.

CALL TO ORDER

Mayor/Chairperson Aguilar

ROLL CALL

City Clerk/Assistant Secretary Olivieri

PUBLIC COMMENT (TIME LIMITATION – 5 MINUTES)

Citizens wishing to address the City Council/Commission on any item on the agenda or on any matter not on the agenda may do so at this time. However, State law (Government Code Section 54950 et seq.) prohibits the City Council/Commission from acting upon any item not contained on the agenda posted 72 hours before a regular meeting and 24 hours before a special meeting. Upon request, the City Council/Commission may, in their discretion, allow citizen participation on a specific item on the agenda at the time the item is considered by the City Council/Commission. Request to address City Council/Commission cards are provided by the City Clerk/Assistant Secretary. If you wish to address the City Council/Commission at this time, please complete a speaker's card and give it to the City Clerk/Assistant Secretary prior to commencement of the City Council/Commission meeting. Please use the microphone provided, clearly stating your name and address for the official record and courteously limiting your remarks to five (5) minutes so others may have the opportunity to speak as well.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

No person shall make any remarks which result in disrupting, disturbing or otherwise impeding the meeting.

SCHEDULED MATTERS

1. Revised City Comment Letter on Draft Environmental Impact Report (DEIR) for Southern California International Gateway (SCIG) Project

At its meeting of January 17, 2012, the City Council approved a draft comment letter on the Draft Environmental Impact Report (DEIR) for the Southern California International Gateway (SCIG) Project.

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The **City Council** will consider for receipt and filing, and provide appropriate direction as deemed necessary on, a revised comment letter on the DEIR for the SCIG Project.

ORDINANCES AND RESOLUTIONS

2. A Resolution of the City Council of the City of Commerce, California, Determining, Pursuant to *Health & Safety Code* §34176(a) [Enacted by AB 1X 26] That the City Will Retain the Responsibility to Perform the Housing Functions Previously Performed by the Commerce Community Development Commission

As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 (“AB 26”) and Assembly Bill 1X 27 (“AB 27”), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making the payments required by AB 27. On December 29, 2011, the California Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional.

Pursuant to AB 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012, which will be transferred to designated successor agencies. *Health & Safety Code* §34176(a) permits the city that authorized the creation of the redevelopment agency to elect to retain the housing assets and functions previously performed by the agency, with all rights, powers, duties and obligations, excluding deposits in the Low and Moderate Income Housing Fund, to be transferred to the successor agency.

The **City Council** will consider for approval and adoption a proposed Resolution determining that, pursuant to *Health & Safety Code* §34176(a), enacted by AB 1X 26, the City will retain the responsibility to perform the housing functions previously performed by the Commission.

3. A Resolution of the Commerce Community Development Commission Providing and Recognizing the Authority of the City of Commerce, as the Successor Agency to the Commission Under AB 1X 26 [*Health & Safety Code* §34176(a)], to Access Accounts Maintained by the Commission in the Local Agency Investment Fund

California Government Code §16429.1 created a Local Agency Investment Fund (“LAIF”) in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer. On January 25, 2012, the State of California Office of the Treasurer informed the Commission that its policies do not allow transactions to be processed in LAIF accounts without evidence that the individual requesting the transaction is authorized by the agency on whose behalf the request is made.

The **Commission** will consider for approval and adoption a proposed Resolution providing and recognizing the authority of the City of Commerce, as the successor agency to the Commission under AB 1X 26 (*Health & Safety Code* §34176(a)), to access accounts maintained by the Commission in the Local Agency Investment Fund (“LAIF”).

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4. A Resolution of the Commerce Community Development Commission Approving an Amended Enforceable Obligation Payment Schedule Required by Health & Safety Code §34167

Health & Safety Code §34169, which is contained in Assembly Bill 1X 26 (“AB 26”), required redevelopment agencies to adopt an Enforceable Obligations Payment Schedule (“EOPS”) by August 28, 2011. *Health & Safety Code §34167*, which is also contained in AB 26, prohibits redevelopment agencies from making any payment which is not listed on the EOPS.

On August 11, 2011, the Supreme Court issued an order which stayed AB 26 except for Part 1.8, and all of Assembly Bill 1X 27 (“AB 27”) (the “Stay”). On August 17, 2011, the Supreme Court issued an additional order which modified the Stay order and clarified that *Health & Safety Code §34169*, which required the preparation of the EOPS, was no longer subject to the Stay. The City Council had already determined that it would proceed under the AB 27 Voluntary Alternative Program. Therefore, it did not appear that the Commission would, under any circumstances, be subject to AB 26. Nevertheless, pursuant to the Supreme Court’s additional order, on August 24, 2011, the Commission adopted an EOPS.

On December 29, 2011, the Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code §34172(a)(1)*) and the Supreme Court’s decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations.

On February 1, 2012, the City will become the successor agency of the Commission, pursuant to *Health & Safety Code §34173*, and, pursuant to *Health & Safety Code §34177*, will be required to make payments under the obligations identified in the EOPS until a Recognized Obligation Payment Schedule (“ROPS”) is approved.

The **Commission** will consider for approval and adoption a proposed Resolution approving an amended Enforceable Obligation Payment Schedule required by *Health & Safety Code §34167*.

5. A Resolution of the City Council of the City of Commerce, California: (1) Demanding Repayment of Loans Made by the City to the Commerce Community Development Commission; (2) Demanding That the Commission Transfer Funds and Assets to the City in the Equivalent Amount of the Outstanding Loan and Interest Payment Balances; and (3) Declaring the City’s Intent to Hold Such Funds and Assets in Trust Until the Validity of the Provisions of AB 1X 26 That Purport to Invalidate Such City Loan Obligations is Fully and Finally Adjudicated by the Courts

From time-to-time, since the creation of the Commerce Redevelopment Agency (“the Agency”) on March 14, 1974, and, subsequently, the Commerce Community Development Commission (“the Commission”), the City, at the request of the Commission, has loaned General Fund monies, with interest, to the Commission to assist in funding administrative and other expenses necessary for the implementation of the redevelopment plans; purchase properties required to implement the Agency’s/Commission’s redevelopment programs and/or defray expenses in connection with carrying out budgeted projects. These loans were formally memorialized in the passage of Resolution Nos. 11-30, 11-31, 11-32 and 11-33, on April 19, 2011, which approved and adopted Loan Agreements 1-4, respectively.

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As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 (“AB 26”) and Assembly Bill 1X 27 (“AB 27”), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making the payments required by AB 27. On December 29, 2011, the California Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional.

Pursuant to AB 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012, which will be transferred to designated successor agencies.

The **City Council** will consider for approval and adoption a proposed Resolution 1) demanding repayment of said loans made by the City to the Commission; (2) demanding that the Commission transfer funds and assets to the City in the equivalent amount of the outstanding loan and interest payment balances; and (3) declaring the City’s intent to hold such funds and assets in trust until the validity of the provisions of AB 1X 26 that purport to invalidate such city loan obligations is fully and finally adjudicated by the courts

6. A Resolution of the Commerce Community Development Commission: (1) Acknowledging the City of Commerce’s Demand For Repayment Loans Made by the City to the Commission; and (2) Authorizing the Transfer of Commission Funds and Assets to the City in the Equivalent Amount of the Outstanding Loan and Interest Payment Balances With the Understanding That the City Will Hold Such Funds and Assets in Trust Until the Validity of the Provisions of AB 1X 26 That Purport to Invalidate Such City Loan Obligations is Fully and Finally Adjudicated by the Courts

From time-to-time, since the creation of the Commerce Redevelopment Agency (“the Agency”) on March 14, 1974, and, subsequently, the Commerce Community Development Commission (“the Commission”), the Commission requested, and received, loans of General Fund monies from the City, with interest, to assist the Commission in funding administrative and other expenses necessary for the implementation of the redevelopment plans; purchase properties required to implement the Agency’s/Commission’s redevelopment programs and/or defray expenses in connection with carrying out budgeted projects. These loans were formally memorialized in the passage of Resolution Nos. 481, 482, 483 and 484 on April 19, 2011, which approved and adopted Loan Agreements 1-4, respectively.

As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 (“AB 26”) and Assembly Bill 1X 27 (“AB 27”), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making the payments required by AB 27. On December 29, 2011, the California Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional.

Pursuant to AB 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012, which will be transferred to designated successor agencies.

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The City has demanded that the Commission repay the loans and transfer funds and assets to the City in the equivalent amount of the outstanding loan and interest payment balances. Further, the City has declared its intent to hold such funds and assets in trust until the validity of the provisions of AB 1X 26 that purport to invalidate such city loan obligations is fully and finally adjudicated by the courts.

The **Commission** will consider for approval and adoption a proposed Resolution (1) acknowledging the City of Commerce's demand for repayment of the loans made by the City to the Commission; and (2) authorizing the transfer of Commission funds and assets to the City in the equivalent amount of the outstanding loan and interest payment balances with the understanding that the City will hold such funds and assets in trust until the validity of the provisions of AB 1X 26 that purport to invalidate such city loan obligations is fully and finally adjudicated by the courts.

7. A Resolution of the City Council of the City of Commerce, California: (1) Demanding That the Commerce Community Development Commission Return/Transfer Real Property Known as the Stahl Trust Property For Which the City Loaned the Commission \$5.7 Million in Order to be Able to Purchase Said Property; and (2) Declaring the City's Intent to Hold the Property in Trust Until the Validity of the Provisions of AB 1X 26 That Purport to Invalidate City Loan Obligations is Fully and Finally Adjudicated by the Courts

On April 16, 2002, the Commerce Community Development Commission ("the Commission") adopted Resolution No. 339, which requested a loan from the City in the amount of \$5.7 million, with an interest rate of 6.5% per annum over the term of the loan, to assist the Commission in the purchase of the Stahl Trust Property, located at Washington Boulevard and Telegraph Road, in Project Area No. 2. The City Council, by adoption of Resolution No. 02-15, on April 16, 2002, approved said loan to the Commission. Since that time, and at the request of the Commission, the loan has been extended for subsequent one-year periods, with the Commission agreeing to pay all accrued interest as of the date of each extension.

As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making the payments required by AB 27. On December 29, 2011, the California Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional.

Pursuant to AB 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012, which will be transferred to designated successor agencies.

The **City Council** will consider for approval and adoption a proposed Resolution demanding that the Commission return/transfer the real property known as the Stahl Trust Property for which the City loaned the Commission \$5.7 million in order to be able to purchase said property, and (2) declaring the City's intent to hold the property in trust until the validity of the provisions of AB 1X 26 that purport to invalidate city loan obligations is fully and finally adjudicated by the courts.

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8. A Resolution of the Commerce Community Development Commission: (1) Acknowledging the City of Commerce's Demand For Return/Transfer of Real Property Known as the Stahl Trust Property For Which the City Loaned the Commission \$5.7 Million in Order to be Able to Purchase Said Property; and (2) Authorizing the Transfer of Said Property With the Understanding That the City Will Hold it in Trust Until the Validity of the Provisions of AB 1X 26 That Purport to Invalidate City Loan Obligations Is Fully and Finally Adjudicated by the Courts

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As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making the payments required by AB 27. On December 29, 2011, the California Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional.

Pursuant to AB 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012, which will be transferred to designated successor agencies.

The City has demanded the return/transfer of the real property known as the Stahl Trust Property, declaring its intent to hold said property in trust until the validity of the provisions of AB 1X 26 that purport to invalidate city loan obligations is fully and finally adjudicated by the courts.

The **Commission** will consider for approval and adoption a proposed Resolution 1) acknowledging the City's demand for the return/transfer of the Stahl Trust Property for which the City loaned the Commission \$5.7 million in order to be able to purchase said property, and (2) authorizing the transfer of said property with the understanding that the City will hold it in trust until the validity of the provisions of AB 1X 26 that purport to invalidate city loan obligations is fully and finally adjudicated by the courts.

RECESS TO CLOSED SESSION

9. Pursuant to Government Code §54956.8,

A. The **Commission** will confer with its real property negotiators, Jorge Rifá and Bob Zarrilli, with respect to real estate negotiations with Mayans Development, Inc., including proposed price and other terms, concerning real property located on Eastern Avenue, commonly known as APN 5241-013-900, APN 5241-013-901, APN 5241-013-902, APN 5241-013-903 and APN 5241-014-900; Greenwood Avenue, commonly known as APN 6357-011-909, APN 6357-011-907 and APN 6357-011-910; Nicola Avenue, commonly known

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as APN 6351-038-900; Neenah Street, commonly known as APN 6356-015-900; Watcher Street, commonly known as APN 6357-014-900, APN 6257-014-901, APN 6357-014-902 and APN 6357-014-903; Gage Avenue, commonly known as APN 6357-016-900, APN 6357-016-901, APN 6357-016-905 and APN 6357-016-002 and Gage Avenue (privately owned), commonly known as APN 6357-016-003.

10. Pursuant to Government Code §54956.9(a),

- A.** The **Commission** will confer with its legal counsel and take the appropriate action, with respect to the pending litigation of California Redevelopment Association, et al. v Ana Matosantos, et al., Supreme Court of the State of California, County of Los Angeles, Case No. S19486.

11. Pursuant to Government Code §54956.9(a),

The **City Council** will confer with its legal counsel, and take the appropriate action, with respect to the pending litigation of City of Cerritos, et al. v. State of California, et al., Superior Court of the State of California, County of Sacramento, Case No. 34-2011-80000952.

12. Pursuant to Government Code §54956.9(b),

- A.** The **City Council** will confer with its legal counsel, and take the appropriate action, with respect to significant exposure to litigation in one potential case.
- B.** The **Commission** will confer with its legal counsel, and take the appropriate action, with respect to significant exposure to litigation in one potential case.

ADJOURNMENT

**LARGE PRINTS OF THIS AGENDA ARE AVAILABLE UPON REQUEST
FROM THE CITY CLERK'S OFFICE, MONDAY-FRIDAY,
8:00 A.M.-6:00 P.M.**



AGENDA REPORT

DATE: January 31, 2012

TO: HONORABLE CITY COUNCIL
FROM: CITY ADMINISTRATOR
SUBJECT: CITY COMMENT LETTER ON THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE SOUTHERN CALIFORNIA INTERNATIONAL GATEWAY (SCIG) PROJECT

RECOMMENDATION:

City Council discretion to receive and file the attached revised comment letter to the Port of Los Angeles Harbor Department concerning the Draft Environmental Impact Report prepared for the Southern California International Gateway (SCIG) Project.

MOTION:

Move to approve the recommendation.

BACKGROUND/ANALYSIS:

On January 17, 2012 the City Council reviewed and approved a draft comment letter on the SCIG project. The letter was drafted to include a number of recommendations to identify, analyze, and address the full range of the proposed project's potential or likely environmental impacts on Commerce. In addition, the Mayor was designated to coordinate any further revisions to the letter on behalf of City Council.

The attached final letter is consistent with the Council action on the January 17th meeting, but has been revised to reflect some additional comments generated by staff especially as it relates to a list of potential mitigation measures that the Port should consider adopting if as staff suspects, the true scope of the project impact extends to Commerce.

The letter will be delivered to the Port in time to meet the February 1st deadline for comments to the DEIR.

RELATIONSHIP TO 2009 STRATEGIC GOALS

This agenda report relates to the 2009 Strategic Planning Goal: "*Protect and Enhance the Quality of Life in the City of Commerce*". Reviewing, monitoring and commenting on projects of regional significance that potentially impact the quality of life for Commerce residents is a key responsibility of staff. Together with City Council oversight and direction, comments will serve to properly document the issues facing the City and the potential impacts and/or mitigation that will be caused by the project.

FISCAL IMPACT:

There are budgeted resources to accomplish review of the DEIR.

Respectfully submitted,

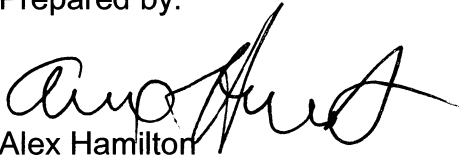

Jorge Rifa
City Administrator

Recommended by:



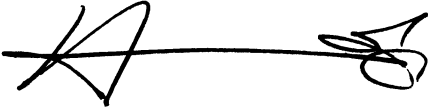
Bob Zarrilli
Director of Community Development

Prepared by:



Alex Hamilton
Assistant Director of Community Development

Fiscal impact reviewed by:



Vilko Domic
Director of Finance

Approved as to Form:



Eduardo Olivo
City Attorney



CITY OF COMMERCE

Joe Aguilar
Mayor

Tina Baca Del Rio
Mayor Pro Tem

Robert C. Fierro
Councilmember

Lilia R. Leon
Councilmember

Denise M. Robles
Councilmember

January 26, 2012

Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90731

RE: **Comments of the City of Commerce on the Southern California International Gateway Project Draft Environmental Impact Report (DEIR)**

Dear Mr. Cannon:

On behalf of the City of Commerce, we appreciate this opportunity to provide the following comments on the Draft Environmental Impact Report (DEIR) for the Southern California International Gateway Project (SCIG). This Project is of particular interest to the City of Commerce because the city is home to four regional rail yards. These four rail yards are located in close proximity to each other and include the Union Pacific (UP) Commerce rail yard, the Burlington Northern and Santa Fe (BNSF) Hobart rail yard, the BNSF Commerce/Eastern rail yard, and the BNSF Sheila Mechanical rail yard. Three of these four rail yards are owned and operated by the BNSF which is also the project applicant for the proposed SCIG project. The City is concerned that any physical and operational changes to the BNSF's Port facilities would have a direct impact on the local BNSF rail yards. The City is also concerned that any substantial increase in rail traffic will have a direct adverse impact on the local environment in Commerce.

A significant number of trains pass through Commerce on a daily basis due to the existing rail yard operations. Additionally, the four rail yards and rail facilities generate a large number of truck trips on a daily basis that service the rail yards. While the economic impact of the rail yards to the economic base of Commerce is significant, of greater concern are the traffic, noise and air quality impacts that could result in Commerce both from the implementation of the proposed Project, as well as the alternatives that are considered in the DEIR. Therefore, as the SCIG DEIR claims that the implementation of the Project would result in significant reductions in truck traffic on the region's roads, Commerce has a number of questions and comments about the data and analysis presented in the DEIR. Our concerns and requested clarifications are outlined in the remainder of this letter.

Comment #1 Identification of Baseline Analysis

The baseline assumptions considered in any environmental document provides the foundation for the analysis. A project's potential impacts and the significance of the impacts are weighed against the existing conditions and, for this reason, the environmental setting must truly reflect the existing environment. The baseline data used to analyze the project's traffic impacts of the proposed project were taken from 2005 data. There is no good explanation in the DEIR of the Port's reasons for relying on outdated and obsolete traffic data, particularly in light of the substantial changes in facilities and circumstances surrounding the regional traffic and infrastructure picture in six years.

The California Environmental Quality Act (CEQA) Guidelines Section 15125 advises that the baseline for comparing project impacts is "normally" the date that the NOP is issued, but the use of the word "normally" indicates the Resources Agency intended some flexibility in the application of that advice to account for changes in relevant aspects of the physical environment from that date in order to properly fulfill CEQA's informational purpose.

Comment #2 Failure to Analyze Local (City of Commerce) Traffic Impacts

The DEIR's traffic analysis claims the proposed project will result in overall reductions in regional truck traffic. The City of Commerce would support any initiative that would reduce truck traffic on city streets. Unfortunately, there is no specific data presented regarding effects on major freeway intersections serving the rail yards in Commerce. Related to this issue, the DEIR also fails to explain whether this additional train traffic would result in any increase in trucks serving the BNSF Hobart Yard.

The City requests the analysis be expanded to quantify the "benefits" that would be realized at local intersections in Commerce with any reduction in truck traffic. At a minimum the following intersections should be evaluated: the freeway ramp connections at the I-710 Freeway and Atlantic Boulevard/Bandini Boulevard; Atlantic Avenue/Washington Boulevard; and Washington Boulevard and Eastern Avenue and Washington Boulevard, and the Mixmaster (Atlantic Avenue, Eastern Avenue, and the I-5 Freeway. These are all intersections that are key to the movement of intermodal trucking related to the Hobart rail yard. Simply stating that a general benefit will be realized without the supporting analysis is a significant deficiency of the DEIR.

Comment #3 Failure to Analyze Local (City of Commerce) Rail Traffic Impacts

The DEIR indicates that rail traffic outside of the Port area will increase by sixteen trains (eight inbound trains and eight outbound) on a daily basis. In addition to the increased number of trains passing through Commerce as a result of the SCIG project, the DEIR notes that the trains "built" at the new inter-modal yard will be longer. The City of Commerce is concerned about the potential impacts in the City relating to traffic delays at crossings, as well as the attendant noise, air quality, and possible human health impacts from the additional train traffic. All of these issues should have been analyzed and disclosed as potential direct and indirect effects of the proposed project.

Commerce residents have experienced direct and deleterious impacts related to rail operations in the City. BNSF's Hobart rail yard in Commerce is the largest rail yard of its kind in the United States. The 243-acre yard, which BNSF says has reached capacity, handles approximately 1.5 million containers a year. There is currently an increased cancer risk for those persons living next to the rail yard due to both the train and truck emissions. Three of the City's residential neighborhoods (the Northwest, Ayers, and Bandini Rosini) are located adjacent to the BNSF Hobart rail yard. The City of Commerce requests the DEIR analyze the proposed SCIG's impact on the health of those residents living next to the BNSF rail yard with a focus on increased emissions from rail traffic and the attendant mitigation (also see our comment related to the DEIR's need for a health risk analysis).

Comment #4 Failure to Adequately Analyze Cumulative Impacts

The previous comments underscore the DEIR's failure to address the proposed project's impact on Commerce. The DEIR indicates that the "affected area" is located in the vicinity of the Port and does not include those areas located along the rail corridors or near the inter-modal trail yards. To the extent that the Port may be relying on the unpublished case cited in the DEIR, *City of Riverside v. City of Los Angeles* (4th App. Distr., Div. 3, Case No. G043651) 2011 WL 3527504 for the belief that it need not analyze these effects in Commerce, Commerce would note the following facts distinguish its circumstances from those in the cited case:

1. The City of Commerce is significantly closer to the Port area (24 miles) than is the City of Riverside and is known to be the intermodal trucking destination for port related traffic due to the Hobart yard;
2. As the home of the BNSF Hobart Yard, which is mentioned throughout the DEIR, there is an implication that Commerce is subject to potential impacts (beneficial or adverse) resulting from the proposed project; and
3. The BNSF Hobart Yard is identified as requiring facilities and operations improvements if the proposed project is not approved (the No Project Alternative scenario).

CEQA case law also makes it clear that lead agencies may not disregard their duty to analyze and disclose significant off-site impacts and to consider feasible mitigation to address those impacts. (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341; see also, *City of San Diego v. Board of Trustees of the California State University* (2011) ___ Cal.App.4th ___ (4th App. Dist., Case No. D057446, Dec. 13, 2011).)

As articulated above, Commerce believes that impacts on the City have been inadequately considered and analyzed. The City questions whether the failure to consider the proposed project's (and alternatives') potential direct and indirect effects on the City of Commerce also affects the DEIR's cumulative impacts analysis, and therefore, the City believes that these omissions cannot help but result in a flawed cumulative analysis. We also find it interesting that

the DEIR acknowledges a much larger “region of influence” that includes “...Los Angeles County, Orange County, Riverside County, San Bernardino County, and Ventura County.”¹

Comment #5 Inadequate Alternatives Analysis

The No Project Alternative project description explains that if the SCIG project is not built, expansion of facilities and operations at the BNSF Hobart Yard would be necessary to accommodate increased cargo train traffic. However, the DEIR fails to detail any of the specific improvements that the Port believes would be necessary under this No Project Alternative and fails to analyze the impacts of any expanded facilities and operations at the Hobart Yard. Similarly, it stands to reason that the expansion of some of the other rail yards in Commerce may also be necessary if the SCIG project is not built, yet the DEIR fails to consider and disclose these further effects of implementing the No Project Alternative.

Additionally, the DEIR fails to note in the description of the Reduced Project Alternative whether any changes to the rail yard facilities and operations in Commerce would be necessary. Again, it stands to reason that such changes might be necessary, if as projected in the No Project Alternative, the increased demand for cargo transportation in the future would necessitate such changes.

The No Project Alternative project description explains that BNSF would make improvements to the Hobart Yard to accommodate the additional cargo demands, and that more truck trips would also result, but the corresponding air quality analysis does not note whether there would be increases in pollutants (including toxic air contaminants) for the receptors surrounding the Hobart and Commerce Yards from these additional improvements and truck and train traffic.

Commerce is also significantly impacted by high truck traffic and noise levels from the rail yards and the trains and trucks serving and utilizing the yards. The No Project Alternative discloses that it would be necessary to expand the BNSF Hobart Yard to accommodate the future growth of cargo transport, but the DEIR fails to acknowledge, let alone analyze, any increases in noise and traffic in Commerce that would result from expansion of operations and facilities at the Hobart Yard.

Comment #6 Need for a Human Health Impact Analysis for Local (City of Commerce) Neighborhoods

As Commerce is home to four regional rail yards, the health hazards to its residents from particulate matter from diesel exhaust (diesel PM) is of particular concern, and any projects that pose a possibility of increasing those hazards in Commerce should be exhaustively analyzed and mitigated. In 2005, the California Air Resources Board (CARB) conducted a health risk assessment study (see attached) to evaluate the health impacts associated with toxic air contaminants emitted in and around the four rail yards in Commerce, focusing especially on emissions from locomotives, on-road trucks, off-road vehicles, cargo handling equipment, portable equipment, and stationary sources.

¹ Refer of Volume 2, Section 8.2.1, Page 8-1 of the DEIR.

Within the two-mile radius around the four rail yards, the combined diesel PM emissions were estimated at about 155 tons per year. The ARB evaluated the potential cancer risks levels associated with the estimated diesel PM emissions and concluded that they range from over 800 chances in a million at the points of maximum impact to about 100 chances per million at one to two miles from the rail yard boundaries. These levels, added to the background risk levels of in the region of about 1,000 in a million caused by all toxic air contaminants, results in a potential combined cancer risk for the most affected areas of Commerce of greater than 1,500 chances in a million. For this reason, Commerce is very concerned about the deficiency of the DEIR's analysis with respect to direct and indirect air quality impacts on residents of Commerce that may result from any increased rail yard operation (including those that would be likely if the No Project Alternative is selected).

Comment #7 Need for an Expanded Environmental Justice Analysis for Local (City of Commerce) Impacts

While we recognize that the analysis of “environmental justice impacts” are not required under CEQA, the DEIR does consider such impacts in a number of areas and cities in Los Angeles County. For example, Table 6-1 (Page 6-2) identifies the cities of Lakewood, Lomita, Rancho Palos Verdes Torrance, Compton though no mention is made of Commerce. The City's population is largely composed of minorities (94.5% of the City is classified as Hispanic).² Only one other City (Compton) identified in the DEIR approaches the racial and ethnic make-up of the City Commerce. In addition, 33.3% of the families and 17.9% of those individuals living in the City had annual incomes below the federally defined poverty level. Even more significantly, the City's unemployment rate as of this past November 2011, was 21.5% which was double that of Los Angeles County and greater than that of any incorporated city of the County.³

Given these statistics and the fact that Commerce will likely experience the most direct impacts outside of the immediate Port area from either the proposed project or the project alternatives, we are puzzled as to why no consideration was given to our minority and/or disadvantaged population? We request that the analysis of environmental justice impacts be expanded to consider the City of Commerce.

Comment #8 Growth Inducing Cumulative Impacts Analysis

The DEIR's analysis of growth inducing impacts is deficient in that no mention is made of any potential growth inducing impacts that could affect the City of Commerce. We are specifically concerned with any expansion within the existing BNSF facilities that will be needed to accommodate either the proposed project or any of the project alternatives. For example, what is impact of longer trains noise, air quality, or traffic impacts in the City? The DEIR should also identify those improvements that will be required within the existing BNSF facilities to accommodate the proposed SCIG project or any of the alternatives.

² United States Bureau of the Census. <http://factfinder.census.gov/>

³ State of California Employment Development Department. Monthly Labor Force Data for Cities and Census Designated Places (CDP). November 2011.

Conclusions

We found a number of deficiencies in the DEIR that stem from a failure to consider any of the proposed SCIG's impacts on the City of Commerce. We would support any initiative on the part of the Port and the BNSF that would represent a clear and direct benefit to the existing and future local (City of Commerce) environment. Towards this end, we are requesting the following clarifications and revisions to be incorporated into the Final EIR (FEIR) before it is certified.

1. The FEIR must clearly state whether the proposed SCIG project will result in measurable changes in the amount of truck traffic volumes to and from the BNSF rail yards in Commerce. Any benefits that would be realized at located intersections (refer to our earlier comment #2) must be clearly identified.
2. The proposed project's impacts on the City associated with any expanded rail operations at the BNSF Hobart rail yard need to be identified along with any mitigation.
3. The issues raised above regarding the DEIR's analysis of project alternatives and growth-inducing impacts as they relate to Commerce need to be addressed.

This letter contains a number of recommendations to identify, analyze and address the full range of the proposed project's potential or likely impacts upon Commerce. Below is a list of potential mitigation measures that the Port should consider adopting, if as Commerce suspects, the true scope of project impacts extends to Commerce:

- The City of Commerce's participation in the implementation of a container fee;
- The requirement for the application and enforcement of clean truck technology to Commerce, including but not limited to the application of clean diesel requirements or a "green fleet" including both trucks serving the yards as well as the train fleets as part of the rail operations; and
- Infrastructure improvements: There are a number of intersections which operate at unacceptable levels of service in Commerce, including Bandini/Atlantic, or that lack the necessary infrastructure improvements to provide for safe and efficient truck access, i.e., Sheila/Atlantic. Commerce City staff would be pleased to work with the Port to identify the specific improvements that should be identified as necessary to mitigate further additions of traffic to these impacted intersections.

We request to be notified of any revisions to the DEIR, public meetings, public hearings, and other activities related to the proposed SCIG's environmental review.

Sincerely,

Joe Aguilar
Mayor



AGENDA REPORT

DATE: January 31, 2012

TO: HONORABLE CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DETERMINING, PURSUANT TO HEALTH AND SAFETY CODE §34176(a) [ENACTED BY AB 1X 26] THAT THE CITY WILL RETAIN THE RESPONSIBILITY TO PERFORM THE HOUSING FUNCTIONS PREVIOUSLY PERFORMED BY THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

RECOMMENDATION:

Approve the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

On March 14, 1974, the City of Commerce (the "City") City Council adopted Ordinance No. 206, which established the Commerce Redevelopment Agency (the "Agency"). Thereafter, the City Council approved and adopted the Redevelopment Plans for Project Area No. 1, Project Area No. 2 (the Town Center Project), Project Area No. 3 (the Atlantic Washington Project) and Project Area No. 4 (collectively, the "Redevelopment Plans"), covering certain properties within the City (the "Project Areas").

On November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been engaged in various activities necessary to execute and implement the Redevelopment Plans pursuant to the provisions of the California Community Redevelopment Law (*Health and Safety Code* §33000, et seq.) ("CRL"), including the performance of various housing functions.

As part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 ("AB 1X 26") and Assembly Bill 1X 27 ("AB 1X 27"), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making certain payments pursuant to AB 1X27.

After AB 1X 26 and AB 1X 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, challenging the constitutionality of AB 1X 26 and AB 1X 27. On December 29, 2011, the California Supreme Court upheld the constitutionality of AB 1X 26, but determined that AB 1X 27 was unconstitutional. Pursuant to AB 1X 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court decision, redevelopment agencies may not take on any new obligations and must now

wind down their existing operations effective February 1, 2012, which will be transferred to designated successor agencies.

ANALYSIS:

Pursuant to *Health & Safety Code* § 34176(a), "The city that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the agency. If a city elects to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, duties, and obligations, excluding any amounts on deposit in the Low and Moderate Income Housing Fund, shall be transferred to the city, county, or city and county." If the City does not elect to retain this function, it shall be transferred to the housing authority or, if no housing authority exists, to the State Housing and Community Development Agency. *Health & Safety Code* § 34176(b). Staff recommends that the City retain the housing assets and functions previously performed by the Commission pursuant to *Health & Safety Code* §34176(a).

FISCAL IMPACT:

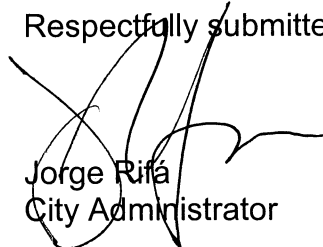
By approving this Resolution, the City is electing to retain the housing assets and functions of the Commission. The Commission currently expends approximately \$1.4 million on funding housing programs (approximately \$1.2 million) and administrative costs (approximately \$200,000) for program implementation of the First Time Homebuyer, Substantial Rehabilitation, Home Preservation, Fix-up Grant, the Senior Rent Subsidy and monitoring of covenants on housing units. Pursuant to AB 1X 26, the Successor Agency may receive an annual administrative operating budget to defray its administrative costs; however, AB 1X 26 will not allow for an offset of the costs associated with the continuance of the aforementioned programs. This annual administrative operating budget will be subject to the approval of the Oversight Board, and equates to an administrative allowance of up to five percent (5%) (with a minimum allowance of \$250,000) of the redevelopment project area property tax for FY 2011/2012 and up to three percent (3%) of the property tax each succeeding fiscal year.

Reviewed by,



Vilko Domic
Finance Director

Respectfully submitted,



Jorge Rifa
City Administrator

Approved As To Form:



Eduardo Olivo
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE, CALIFORNIA, DETERMINING, PURSUANT TO *HEALTH & SAFETY CODE* §34176(a) [ENACTED BY AB 1X 26] THAT THE CITY WILL RETAIN THE RESPONSIBILITY TO PERFORM THE HOUSING FUNCTIONS PREVIOUSLY PERFORMED BY THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION

WHEREAS, on March 14, 1974, the City of Commerce (the "City") City Council adopted Ordinance No. 206, which established the Commerce Redevelopment Agency (the "Agency"). Thereafter, the City Council approved and adopted the Redevelopment Plans for Project Area No. 1, Project Area No. 2 (the Town Center Project), Project Area No. 3 (the Atlantic-Washington Project) and Project Area No. 4 (collectively, the "Redevelopment Plans"), covering certain properties within the City (the "Project Areas"); and

WHEREAS, on November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been engaged in various activities necessary to execute and implement the Redevelopment Plans pursuant to the provisions of the California Community Redevelopment Law (*Health & Safety Code* §33000, *et seq.*) ("CRL"), including the performance of various housing functions; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed companion bills, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved as of October 1, 2011, unless the community that created it enacted an ordinance committing it to making the payments required by AB 27; and

WHEREAS, after AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, challenging the constitutionality of AB 26 and AB 27; and

WHEREAS, on December 29, 2011, the California Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional; and

WHEREAS, pursuant to AB 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012, which will be transferred to designated successor agencies; and

WHEREAS, pursuant to *Health & Safety Code* §34176(a), "The city that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the agency. If a city elects to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, duties, and obligations, excluding any amounts on deposit in the Low and Moderate Income Housing Fund, shall be transferred to the city, county, or city and county."

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The recitals set forth above are true and correct and are incorporated by reference herein.

Section 2. Pursuant to *Health & Safety Code* §34176(a), the City hereby elects to retain the responsibility for performing the housing functions previously performed by the Commerce Community Development Commission.

PASSED, APPROVED AND ADOPTED this 31st day of January, 2012.

Joe Aguilar
Mayor

ATTEST:

Linda Kay Olivieri, MMC
City Clerk



AGENDA REPORT

DATE: January 31, 2012

TO: HONORABLE COMMUNITY DEVELOPMENT COMMISSION
FROM: EXECUTIVE DIRECTOR
SUBJECT: A RESOLUTION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION AUTHORIZING AND RECOGNIZING THE AUTHORITY OF THE CITY OF COMMERCE, AS THE SUCCESSOR AGENCY TO THE COMMISSION UNDER AB 1X 26 [HEALTH & SAFETY CODE §34173] TO ACCESS ACCOUNTS MAINTAINED BY THE COMMISSION IN THE LOCAL AGENCY INVESTMENT FUND

RECOMMENDATION:

Approve the Resolution and assign the number next in order.

MOTION:

Move to approve the recommendation.

BACKGROUND:

California *Government Code* §16429.1 created a Local Agency Investment Fund ("LAIF") in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer. The Commerce Community Development Commission ("Commission") maintains an account with LAIF.

Pursuant to AB 1X 26 and the California Supreme Court decision in *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S19486, effective February 1, 2012, the Commission, which acts as the City of Commerce's (the "City") redevelopment agency, will cease to exist.

Pursuant to *Health & Safety Code* §34173 [enacted by AB 1X 26]: "Successor agencies are successor entities to the former redevelopment agencies... [a] ll authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the CRL are hereby vested in the successor agencies..." *Health & Safety Code* §34173 [enacted by AB 1X 26] provides that the "City" become the successor agency to the Commission by February 1, 2012. On January 31, 2012, pursuant to Resolution No. 12-8, the City Council of the City of Commerce confirmed its intent to become the successor agency to the Commission.

By letter dated January 25, 2012, the State of California Office of the Treasurer informed the Commission that their policies do not allow transactions to be processed in LAIF accounts without evidence that the individual requesting the transaction is authorized by the agency on whose behalf the request is made.

The Office of the Treasurer has advised that, because the Commission will no longer exist as of February 1, 2012, it requires a Resolution and bank and authorization form, the name of the successor agency for the Commission and the contact from the successor agency that they can work with to get the authorization documents in place. Commission staff will be directed to: (1) provide the Office of the Treasurer with a copy of this Resolution; and (2) provide the Office of the Treasurer with a copy of City

Council Resolution No.12-8. Furthermore, Commission staff will be authorized to advise the Office of the Treasurer that the following City officers, in their capacity as officers of the City as the Commission's successor agency, shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund: Vilko Domic, Director of Finance/City Treasurer; and Barbara Perez, Deputy City Treasurer.


FISCAL IMPACT:

The proposed action will not have any fiscal impact on the Commission or the City, as successor agency to the Commission.

Reviewed by,


Vilko Domic
Finance Director

Respectfully submitted,


Jorge Rifa
Executive Director

Approved As To Form


Eduardo Olivo
Commission Counsel

RESOLUTION NO. _____

A RESOLUTION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION AUTHORIZING AND RECOGNIZING THE AUTHORITY OF THE CITY OF COMMERCE, AS THE SUCCESSOR AGENCY TO THE COMMISSION UNDER AB 1X 26 [HEALTH & SAFETY CODE §34173], TO ACCESS ACCOUNTS MAINTAINED BY THE COMMISSION IN THE LOCAL AGENCY INVESTMENT FUND

WHEREAS, California *Government Code* §16429.1 created a Local Agency Investment Fund ("LAIF") in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

WHEREAS, the Commerce Community Development Commission maintains two accounts with the LAIF (one under Community Development Commission and the other for the 2003 Redevelopment ABC Bonds); and

WHEREAS, pursuant to AB 1X 26 and the California Supreme Court decision in *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S19486, effective February 1, 2012, the Commission, which acts as the City's redevelopment agency, will cease to exist; and

WHEREAS, *Health & Safety Code* §34173 [enacted by AB 1X 26] provides that: "Successor agencies are successor entities to the former redevelopment agencies....[a]ll authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the CRL are hereby vested in the successor agencies...."; and

WHEREAS, *Health & Safety Code* §34173 [enacted by AB 1X 26] provides that the City will become the successor agency to the Commission by February 1, 2012; and

WHEREAS, on January 17, 2012, pursuant to Resolution No. 12-8, the City Council of the City of Commerce confirmed its intent to become the successor agency to the Commission; and

WHEREAS, by letter dated January 25, 2012, the State of California Office of the Treasurer informed the Commission that their policies do not allow transactions to be processed in LAIF accounts without evidence that the individual requesting the transaction is authorized by the agency on whose behalf the request is made; and

WHEREAS, the Office of the Treasurer has advised that, because the Commission will no longer exist as of February 1, 2012, it requires a resolution and bank and authorization form, the name of the successor agency for the Commission and the contact from the successor agency that they can work with to get the authorization documents in place.

NOW THEREFORE, BE IT RESOLVED BY THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION AS FOLLOWS:

Section 1. The recitals set forth above are true and correct.

Section 2. Commission staff is directed to: (1) provide the Office of the Treasurer with a copy of this resolution; and (2) provide the Office of the Treasurer with a copy of City Council Resolution No. 12-8.

Section 3. Commission staff is authorized to advise the Office of the Treasurer that the following City of Commerce officers, in their capacity as officers of the City as the Commission's successor agency, shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund:

Vilko Domic
Director of Finance/
City Treasurer

Barbara Perez
Deputy City Treasurer

RESOLUTION NO. _____

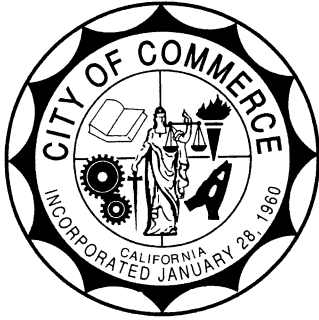
Page 2 of 2

PASSED, APPROVED AND ADOPTED the 31st day of January, 2012.

Joe Aguilar
Chairperson

ATTEST:

Jorge J. Rifá
Secretary



AGENDA REPORT

DATE: January 31, 2012

TO: HONORABLE COMMUNITY DEVELOPMENT COMMISSION

FROM: EXECUTIVE DIRECTOR

SUBJECT: A RESOLUTION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION APPROVING AN AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE REQUIRED BY HEALTH & SAFETY CODE §34167

RECOMMENDATION:

Approve the Resolution and assign the number next in order.

MOTION:

Approve the recommendation.

BACKGROUND:

The Commerce Community Development Commission ("Commission") was authorized to transact business and exercise the powers of a redevelopment agency. On June 15, 2011, the California Legislature approved Assembly Bill 1X 26 ("AB 1X 26") and Assembly Bill 1X 27 ("AB 1X 27"); the bills were signed by the Governor on June 28, 2011. AB 1X 26 and AB 1X 27 added Parts 1.8, 1.85 and 1.9 of Division 24 to the California *Health & Safety Code*. Part 1.85 of the *Health & Safety Code*, which is contained in AB 1X 26, requires all redevelopment agencies to dissolve as of October 1, 2011, and provides for the establishment of a successor entity to administer the enforceable obligations of the redevelopment agency. Part 1.8 of the *Health & Safety Code*, which is also contained in AB 1X 26, restricts activities of redevelopment agencies to meeting their enforceable obligations, preserving assets and meeting other goals in the interim period prior to dissolution.

AB 1X 27 provided cities with the option of opting out of AB 1X 26 by adopting an ordinance that would allow their redevelopment agencies to participate in a "Voluntary Alternative Redevelopment Program" that would require certain annual remittances to the Los Angeles County Auditor-Controller. On August 1, 2011, the City Council of the City of Commerce determined that it would proceed under the AB 1X 27 Voluntary Alternative Program and, therefore, approved the first reading of the ordinance required by AB 1X 27.

Health & Safety Code §34169, which is contained in AB 1X 26, required redevelopment agencies to adopt an Enforceable Obligations Payment Schedule ("EOPS") by August 28, 2011. *Health & Safety Code* §34167, which is also contained in AB 1X 26, prohibits redevelopment agencies from making any payment which is not listed on the EOPS.

After AB 1X 26 and AB 1X 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S19486, challenging the constitutionality of AB 1X 26 and AB 1X 27. On August 11, 2011, the Supreme Court

issued an order, which stayed AB 1X 26 except for Part 1.8, and all of AB 1X 27 (the "Stay"). On August 17, 2011, the Supreme Court issued an additional order which modified the "Stay" order and clarified that *Health & Safety Code* §34169, which required the preparation of the EOPS was no longer subject to the "Stay". The City Council had already determined that it would proceed under the AB 1X 27 Voluntary Alternative Program. Therefore, it did not appear that the Commission would, under any circumstance be subject to AB 1X 26. Nevertheless, pursuant to the Supreme Court's additional order, on August 24, 2011, the Commission adopted an EOPS.

On December 29, 2011, the Supreme Court upheld the constitutionality of AB 1X 26, but determined that AB 1X 27 was unconstitutional. Pursuant to AB 1X 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court's decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations effective February 1, 2012.

ANALYSIS:

The Commission has reviewed the EOPS that was adopted on August 24, 2011, in order to make sure that it has included all obligations that it believes should be allowed under AB 1X 26. The proposed Resolution adopts an amended EOPS so that the Commission is in compliance with *Health & Safety Code* § 34169. The EOPS identifies the following obligations of the Commission from the end of August through June 30, 2012:

1. Bonds, including the required debt service, reserve set-asides and any other required payments.
2. Loans of moneys borrowed by the Commission, including City loans to the Commission. AB 1X 26 provides that the City loan obligations are not technically considered "enforceable obligations." The Commission recognizes that these loans were made by the City in good faith. The Commission believes that it had and still has the legal obligation to repay such debts and pay interest on the amounts due. The validity of this portion of AB 1X 26 is currently being litigated and has still not been finally addressed.
3. Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law.
4. Judgments or settlements entered by a competent court of law or binding arbitration decisions against the Commission.
5. Any legally binding and enforceable agreement or contract that does not violate the Commission's debt limit.
6. Contracts or agreements necessary for the continued administration or operation of the Commission.

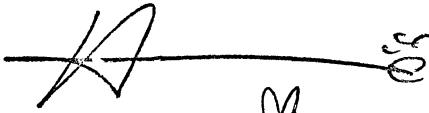
After the amended EOPS is adopted it must be posted on the City's website and submitted by mail or electronic means to the County Auditor-Controller, the State Controller's Office and the State Department of Finance.

FISCAL IMPACT:

The Commission will cease to exist on February 1, 2012. The City will be the successor agency to the Commission and will, until a Recognized Obligation Payment Schedule becomes operative will be allowed to only make payments required pursuant to the EOPS. The initial EOPS for the Successor Agency shall be the last EOPS adopted by Commission. *Health & Safety Code* §34177 pursuant to AB 1X 26, the Successor Agency may receive an annual administrative operating budget to defray its administrative costs. This annual administrative operating budget will be subject to the

approval of the Oversight Board, and equates to an administrative allowance of up to five percent (5%) (with a minimum allowance of \$250,000) of the redevelopment project area property tax for FY 2011/2012 and up to three percent (3%) of the property tax each succeeding fiscal year.

Reviewed by,



Vilko Domic
Finance Director



Respectfully submitted,



Jorge Rifa
Executive Director

Reviewed by,



Robert Zarrilli
Community Development Director

Approved As To Form:



Eduardo Olivo
Commission Counsel

RESOLUTION NO. _____

A RESOLUTION OF THE COMMERCE COMMUNITY DEVELOPMENT COMMISSION
APPROVING AN AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE
REQUIRED BY *HEALTH & SAFETY CODE* §34167

WHEREAS, on March 14, 1974, the City of Commerce (the "City") City Council adopted Ordinance No. 206, which established the Commerce Redevelopment Agency (the "Agency"). Thereafter, the City Council approved and adopted the Redevelopment Plans for Project Area No. 1, Project Area No. 2 (the Town Center Project), Project Area No. 3 (the Atlantic Washington Project) and Project Area No. 4 (collectively, the "Redevelopment Plans"), covering certain properties within the City (the "Project Areas"); and

WHEREAS, on November 3, 1992, the City Council adopted Ordinance No. 467, which created the Commerce Community Development Commission (the "Commission"). The Commission is the successor-in-interest to the Agency and has, since its creation, been authorized to and has been engaged in various activities necessary to execute and implement the Redevelopment Plans pursuant to the provisions of the California Community Redevelopment Law (*Health & Safety Code* §33000, *et seq.*) ("CRL"); and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature recently enacted and the Governor has signed companion bills, Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27"), requiring that each redevelopment agency in the State be dissolved unless the community that created it enacts an ordinance committing it to making certain payments. AB 26 prohibits redevelopment agencies from taking numerous actions, effective immediately and retroactively, and provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, *Health & Safety Code* §34169, which is contained in AB 26, required redevelopment agencies to adopt an Enforceable Obligations Payment Schedule ("EOPS") by August 28, 2011. *Health & Safety Code* §34167, which is also contained in AB 26, prohibits redevelopment agencies from making any payment which is not listed on the EOPS; and

WHEREAS, after AB 26 and AB 27 were enacted, the League of California Cities, the California Redevelopment Association and the cities of San Jose and Union City filed a petition with the California Supreme Court, entitled *California Redevelopment Association, et al. v. Matosantos, et al.* Case No. S19486, challenging the constitutionality of AB 26 and AB 27. On August 11, 2011, the Supreme Court issued an order which stayed AB 26 except for Part 1.8, and all of AB 27 (the "Stay"). On August 17, 2011, the Supreme Court issued an additional order which modified the Stay order and clarified that *Health & Safety Code* §34169, which required the preparation of the EOPS, was no longer subject to the Stay. The City Council had already determined that it would proceed under the AB 27 Voluntary Alternative Program. Therefore, it did not appear that the Commission would, under any circumstances, be subject to AB 26. Nevertheless, pursuant to the Supreme Court's additional order, on August 24, 2011, the Commission adopted an EOPS; and

WHEREAS, on December 29, 2011, the Supreme Court upheld the constitutionality of AB 26, but determined that AB 27 was unconstitutional. Pursuant to AB 26 (*Health & Safety Code* §34172(a)(1)) and the Supreme Court's decision, redevelopment agencies may not take on any new obligations and must now wind down their existing operations; and

WHEREAS, AB 26 provides that a "successor agency" will take over and dispose of all the Commission's assets and use the revenues generated to pay for various State programs; and

WHEREAS, pursuant to *Health & Safety Code* §34173, on February 1, 2012, the City will become the successor agency of the Commission; and

WHEREAS, pursuant to *Health & Safety* §34177, the successor agency is required to make payments under the obligations identified in the EOPS until a Recognized Obligation Payment Schedule ("ROPS") is approved; and

WHEREAS, the Commission has reviewed the EOPS that was adopted on August 24, 2011, in order to make sure that it includes all obligations that it believes should be allowed under AB 26.

NOW, THEREFORE, THE COMMERCIAL COMMUNITY DEVELOPMENT COMMISSION DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are true and correct and are incorporated by reference herein.

Section 2. The Commission hereby adopts the amended Enforceable Obligation Payment Schedule.

PASSED, APPROVED AND ADOPTED this 31st day of January, 2012.

Joe Aguilar, Chairperson

ATTEST:

Jorge Rifa, Secretary