

APPENDIX D

NOP Comment Letters

September 20, 2024

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Sent via email

Dear Lisa Ochsner:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Notice of Preparation (NOP) for the Berth 97-109 (China Shipping) Container Terminal Project (Project) Revised Supplemental Environmental Impact Report (Revised SEIR), State Clearinghouse No. 2003061153. The China Shipping Project is within the jurisdiction of the City of Los Angeles Harbor Department (LAHD), which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Background

The Project consists of the continued operation of Berths 97-109 in the Port of Los Angeles. China Shipping operates the China Shipping Container Terminal under a lease agreement (also referred to as Permit No. 999) between China Shipping and LAHD. The Project, which has already been constructed and is operational, includes lengthened wharfs at Berths 100 and 102, placement and use of 10 new shoreside A-frame cranes, use of 142 acres of terminal backlands, construction and use of various new onsite facilities, and improvements to roadways.¹ Due to these improvements, the Project would result in a substantial increase in TEU throughput at the China Shipping Terminal resulting in increases in vessel calls, heavy-duty truck trips, and train trips. Due to this increased activity, an increase in air pollution was reasonably foreseeable.

Due to concerns of potential environmental impacts associated with the construction and operation of the Project, the LAHD and the U.S. Army Corps of Engineers released a joint environmental impact report/environmental impact statement for the Project in September 2008 (2008 EIR/EIS). The 2008 EIS/EIR was prepared in response to a court order and the 2004 Amended Stipulated Judgement (ASJ) between China Shipping and the

¹ LAHD, 2008. Berth 97-109 (China Shipping) Container Terminal Project Recirculated Draft Environmental Impact Report/Environmental Impact Statement. Page 2-1. Accessible at https://kentico.portoflosangeles.org/getmedia/b2e0115e-492a-4c79-b409-35348abd2608/2_Project_Description

Port of Los Angeles. The 2008 EIS/EIR was later certified in 2008 and proposed the adoption of 52 mitigation measures to reduce the Project's environmental impacts.

In 2017, the LAHD released the China Shipping Recirculated Draft Supplemental EIR (2017 RDEIR),² which evaluated the potential environmental impacts of the proposed modification of 10 mitigation measures and one lease measure that had not yet been fully implemented. The comment letters on the Project submitted by the AGO, South Coast Air Quality Management District (SCAQMD), and the National Resources Defense Council (NRDC) expressed concerns that the 2017 Draft SEIR removed key feasible mitigation measures previously adopted in the original 2008 EIR/EIS.^{3,4}

In response to comments received on the 2017 RDEIR, the LAHD made changes to the Project's air quality analysis and minor edits to the proposed mitigation measures. These changes were reflected in the China Shipping Recirculated Draft Supplemental Environmental Impact Report (2018 RSEIR).⁵ The AGO, SCAQMD, and NRDC submitted comment letters on the 2018 RSEIR reiterating their concern of potential health impacts of the proposed relaxation of the mitigation measures that were originally proposed in the 2008 EIR/EIS.⁶ The LAHD later certified the China Shipping Final Supplemental Environmental Impact Report (2019 FSEIR) in October 2019.^{7,8,9} In late 2019 and early 2020, the Office of the Attorney General of the State of California (AGO), SCAQMD, CARB and NRDC submitted appeal letters on the LAHD decision to approve the 2019

² LAHD, 2017. Berths 97-109 [China Shipping] Container Terminal Project SEIR. Accessible at: <https://www.portoflosangeles.org/environment/environmental-documents>

³ SCAQMD Comment Letter on the 2017 SEIR. September 29, 2017. Accessible at: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2017/dseir-chinashipping-092917.pdf?sfvrsn=6>

⁴ CARB Comments on the 2017 SEIR. September 29, 2017. Accessible at: <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/ttdceqalist/chinashipping.pdf>

⁵ LAHD, 2018. Berths 97-109 [China Shipping] Container Terminal Project Revised SEIR. Accessible at: <https://www.portoflosangeles.org/environment/environmental-documents>

⁶ SCAQMD Comment Letter on the 2017 SEIR. Accessible at: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/october/LAC190905-02.pdf?sfvrsn=8>

⁷ LAHD, 2019. Berths 97-109 [China Shipping] Container Terminal Project Final Revised SEIR. Accessible at: <https://www.portoflosangeles.org/environment/environmental-documents>

⁸ City of Los Angeles City Council, 2020. Official Action of the Los Angeles City Council. August 12, 2020. Accessible at: https://clkrep.lacity.org/onlinedocs/2019/19-1263_CAF_08-12-2020.pdf

⁹ NRDC Comment Letter on the China Shipping FRSEIR. October 3, 2019. Accessible at: <https://kentico.portoflosangeles.org/getmedia/23a1b785-052d-44dc-8dd4-5db355252b80/2019-10-03-China-Shipping-FSEIR-comments>

FSEIR.^{10,11,12,13,14,15} On August 12, 2020, the City of Los Angeles City Council denied the appeal and approved the 2019 FEIR.

In the 16 years since the certification of the 2008 EIR/EIS, due to failures by LAHD to enforce the mitigation and refusal by China Shipping to comply with several key mitigation measures in the SEIR, several mitigation measures and one lease measure have not yet been fully implemented. Throughout that time, the expanded terminal has operated and produced additional emissions, significantly impacting the communities surrounding the port while not implementing the required mitigation. After several petitioners successfully litigated this issue in court (as well as challenges to the 2019 FEIR's air quality analysis), the court ordered the certification of the 2019 SEIR to be set aside. The court also directed LAHD and China Shipping to amend China Shipping's permit, to implement and make enforceable the mitigation measures and lease measures upheld by the court. Finally, the court ordered LAHD to prepare a Revised SEIR that would include re-evaluation and revision of the following issues from the 2019 FSEIR, resulting in the immediate NOP.

The Project Increases Exposure to Air Pollution for Residences Located in Disadvantaged Communities

Since the certification of the 2008 EIR/EIS, the Project was constructed and allowed to operate without the full implementation of the mitigation measures provided in the 2008 EIR/EIS aimed at protecting public health. The continued operation of the Project has, and continues, to expose nearby communities to elevated levels of air pollution, including diesel particulate matter (diesel PM) and oxides of nitrogen (NOx) from the operation of marine vessels, heavy-duty trucks, onsite equipment, and locomotives. According to the 2018 RSEIR, the operation of the Project would expose nearby residences to 1,937 pounds per day of NOx and 151 pounds per day of particulate matter less than 10 micrometers

¹⁰ NRDC Appeal Letter on the FRSEIR. October 18, 2019. Accessible at:

https://clkrep.lacity.org/onlinedocs/2019/19-1263_misc_10-18-2019.pdf

¹¹ SCAQMD Appeal Letter on the FRSEIR. December 4, 2019. Accessible at:

https://clkrep.lacity.org/onlinedocs/2019/19-1263_rpt_pub_12-04-2019.pdf

¹² SCAQMD Appeal Letter on FRSEIR. July 16, 2020. Accessible at:

https://clkrep.lacity.org/onlinedocs/2019/19-1263_PC_AB_07-16-2020.pdf

¹³ CARB Appeal Letter on the FRSEIR. February 3, 2020. Accessible at:

https://clkrep.lacity.org/onlinedocs/2019/19-1263_PC_AB_02-03-2020.pdf

¹⁴ Appeal Letter from the Office of the California Attorney General on the FRSEIR. April 7, 2020. Accessible at:

https://clkrep.lacity.org/onlinedocs/2019/19-1263_misc_04-07-20.pdf

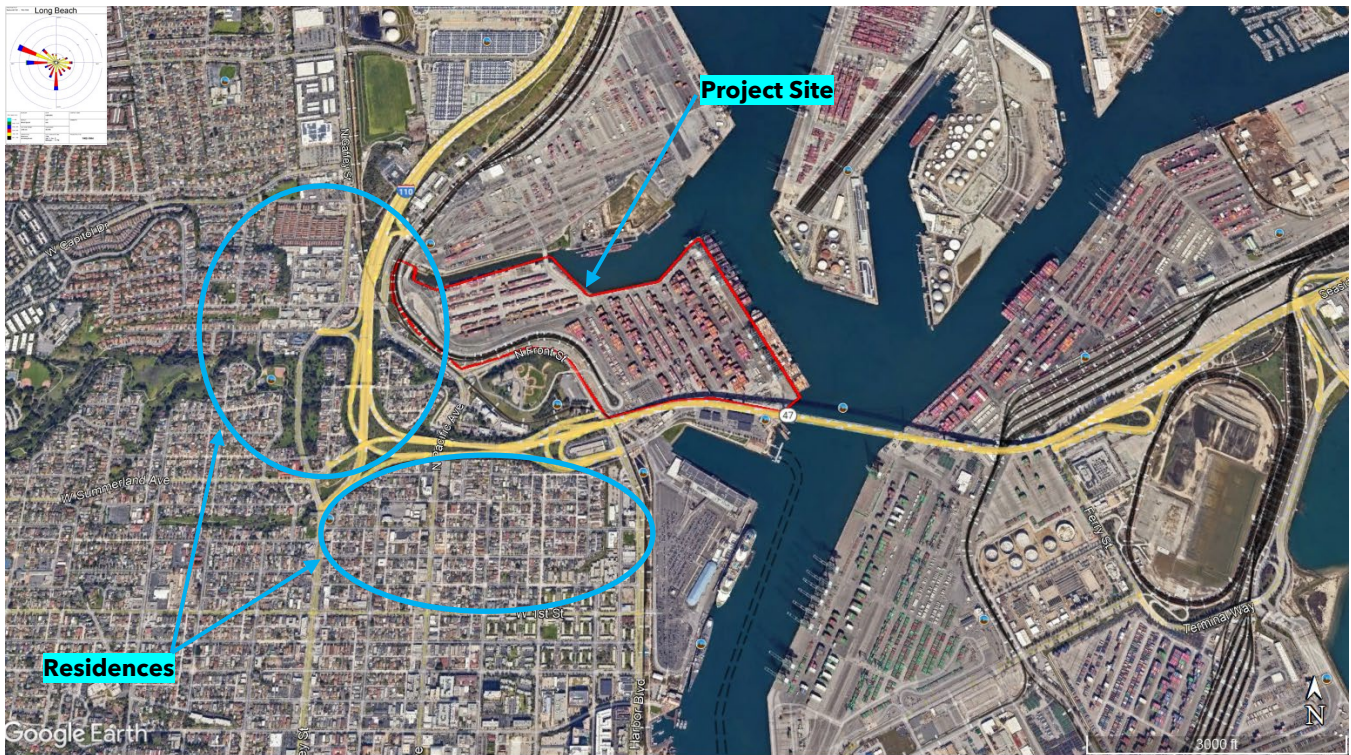
¹⁵ Joe Buscaino, Councilmember, 15th District. Letter to Los Angeles City Council. July 17, 2020. Accessible at:

https://clkrep.lacity.org/onlinedocs/2019/19-1263_misc_7-17-20.pdf

(PM10); these levels of harmful emissions are all well above the SCAQMD's air quality threshold of significance.¹⁶

As shown in Figure 1 below, many residences are located near of the Project. Residences are located west of the Project, with the closest residences situated approximately 630 feet from the Project's western boundary. In addition to residences, Taper Avenue Elementary School, Park Western Place Elementary School and Barton Hill Elementary School are located within a mile of the Project. These residences and schools are located within the Wilmington, Carson, West Long Beach Community (WCLBC) which has been designated as a disadvantaged community under Assembly Bill (AB) 617 (C. Garcia, Chapter 136, Statutes of 2017).¹⁷ Therefore, CARB is particularly concerned about localized air pollutant exposure at the neighborhood level, as well as the Project's regional air quality impacts.

Figure 1: Project Location Relative to Residences



¹⁶ LAHD, 2018. Berths 97-109 (China Shipping) Container Terminal Recirculated Draft Supplemental Environmental Impact Report. Page 3.1-51. Table 3.1-9. Accessible at https://kentico.portoflosangeles.org/getmedia/e75c5353-bb13-4f23-8f0c-9b7466a0c361/03-1_CS_Air_Quality_RSEIR

¹⁷ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

Health-harming emissions, including diesel PM, a toxic air contaminant with no safe level of exposure, generated from the operation of the Project have, and continues to, negatively impact the community, which is already disproportionately impacted by air pollution from existing freight operations as well as stationary sources of air pollution.¹⁸ According to the base year (2017) emissions inventory presented in the WCLB Community Emissions Reduction Plan (CERP), the residences located within the WCLBC are currently exposed to 10,614 tons of NOx, 5,642 tons of volatile organic compounds (VOC), and 1,323 tons of particulate matter less than 2.5 micrometers (PM2.5) annually.¹⁹ A large percentage of these annual air pollutant emissions are generated by off-road and on-road emission sources such as those servicing rail and port facilities. The continued operation of the Project will increase air pollutant emissions in these communities if not mitigated. To protect the residents living in the WCLB community, the LAHD and China Shipping should incorporate all feasible mitigation measures in the Project's final design.

The LAHD and China Shipping Must Fully Evaluate the Project's Air Quality and Health Risk Impacts in the Revised SEIR

The operation of the Project results in increased rail traffic and vessel calls, along with increased truck traffic, all of which negatively impact nearby residents. CEQA requires the lead agency to "determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record." (See Title 14, Cal. Code of Regs., § 21082.2, subd. (a)). To fully evaluate the Project's air quality and health risk impacts, the LAHD and China Shipping must analyze all direct and reasonably foreseeable air quality and health risk impacts associated with the operation of the Project.

The health risk assessment (HRA) prepared for the Project should be based on the latest Office of Environmental Health Hazard Assessment's (OEHHA) guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments).²⁰ The on-road and off-road Diesel PM emissions used to estimate the proposed Project's cancer risk impacts should be based on CARB's latest 2021 Emission Factors model (EMFAC2021) and OFFROAD2021, respectively.^{21,22}

¹⁸ CARB. CARB Identified Toxic Air Contaminants. Accessible at <https://ww2.arb.ca.gov/resources/documents/carb-identified-toxic-air-contaminants>

¹⁹ South Coast Air Quality Management District. Community Emissions Reduction Plan Wilmington, Carson, West Long Beach. September 2019. Accessible at <https://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/wilmington/cerp/final-cerp-wcwlb.pdf?sfvrsn=8>

²⁰ Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February 2015. Accessed at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>.

²¹ CARB. Emission Factors model Web Platform. Accessible at: <https://arb.ca.gov/emfac/emissions-inventory/7fbbb7c961d621ffc05eb5e5f8dfd175c8cff0fc>

²² CARB. OFFROAD2021 Web Platform. Accessible at: <https://arb.ca.gov/emfac/offroad/>

CEQA also requires lead agencies to consider whether the incremental effects of a proposed project are cumulatively considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. (See Title 14, Cal. Code of Regs., § 15064, subd. (h)(1)). The LAHD and China Shipping must consider the combined air quality and health risk impacts of the Project, and other reasonably foreseeable projects that may arise because of the Project. Should the Revised SEIR find that the Project would result in a cumulatively significant impact, CEQA requires that the LAHD and China Shipping must implement all feasible mitigation measures to reduce those impacts to a less-than-significant level.

As shown in the 2018 DEIR, LAHD and China Shipping find that the operation of the Project would expose residences near the Project site to diesel PM that would result in a significant and unavoidable health impact. Since it is likely that the Revised SEIR will reach a similar impact conclusion, CARB urges the LAHD and China Shipping to include additional meaningful mitigation measures to reduce the Project's potential health risk impacts to the neighboring communities. As further discussed below, additional feasible mitigation options have become available in the five years since the last EIR was finalized.

The Revised SEIR Should Include a Mitigation Measure that Ensures the Project Uses the Cleanest Switcher and Line-Haul Locomotives Available

To reduce the Project's impacts to air quality, greenhouse gas, and health risk, CARB urges the LAHD and China Shipping to plan for the use of zero-emission switcher and line-haul locomotives within the Project to address the Project's impact on air quality and public health. According to the 2018 RSEIR, the operation of the Project would result in 723 daily train trips in the year 2030.²³ To reduce the Project's potential air quality and health risk impacts, CARB urges the LAHD and China Shipping to include either a project design feature or mitigation measure that requires all locomotives serving the Project to be zero-emission and to install on-site infrastructure to support those zero-emission locomotives.

On April 27, 2023, CARB approved the In-Use Locomotive Regulation to reduce air pollutant emissions, toxic air contaminants, and greenhouse gas (GHG) emissions from locomotives operating throughout California. More information about the proposed In-Use Locomotive Regulation can be obtained from CARB's website: <https://ww2.arb.ca.gov/our-work/programs/reducing-rail-emissions-california/locomotive-fact-sheets>.

Based on emerging technologies in batteries and hydrogen fuel cells, zero-emission locomotive operation could be used to meet the needs of the Project. CARB estimates that zero-emission technology will be commercially available by 2030 for passenger, switcher,

²³ LAHD, 2018. Berths 97-109 (China Shipping Container Terminal Recirculated Draft Environmental Impact Report. Page 2-13. Table 2-3. Accessible at https://kenticoportoflosangeles.org/getmedia/7acf4b8e-3663-45df-a080-b276ee338e86/02_CS_Project_Description_RDSEIR

and industrial locomotives and by 2035 for freight line haul locomotives.²⁴ CARB has sponsored, and continues to sponsor, demonstration projects to accelerate the adoption of clean freight technologies and to reduce air pollution caused by the movement of goods throughout the State. CARB's Zero and Near Zero-emission Freight Facilities Program successfully demonstrated batteries in locomotives that could be applied to the Project.²⁵

The Revised SEIR Should Facilitate All Heavy-Duty Trucks Serving the Project To Be Zero-Emission

The Project involves the use of heavy-duty trucks to transport freight to its final destinations. According to the 2018 RSEIR, the operation of the Project would result in 1,501,817 daily truck trips in the year 2030.²⁶ To reduce the Project's potential air quality, health risk and greenhouse gas impacts, CARB urges the LAHD and China Shipping to include either project design features or mitigation measures that facilitate the transition to all zero-emission heavy-duty trucks, including by installing on-site infrastructure to support those zero-emission trucks, and through other creative measures that incentivize use of zero-emission trucks (such as expanded zero-emission priority lanes).

As presented below, CARB has adopted regulations that promote and eventually require the use of zero-emission trucks at freight facilities, such as the Project. Specifically, the Advanced Clean Fleets Regulation sets forth a path for transitioning to a zero-emission fleet statewide and would require all drayage trucks in California to transition to zero-emission over time and be fully zero-emission by 2035. To support trucks serving the Project that are already complying with the Advanced Clean Fleets regulation, CARB urges the LAHD and China Shipping to require, as either a Project design measure or as a mitigation measure, the infrastructure to support on-site zero-emission trucks. A list of commercially-available zero-emission trucks can be obtained from the Hybrid and Zero-emission Truck and Bus Voucher Incentive Project (HVIP).²⁷ The HVIP is a part of California Climate Investments to incentivize the purchase of zero-emission trucks. Based on CARB's review of the zero-emission trucks listed in the HVIP, today there are commercially available electric trucks that can meet the cargo transportation needs of individual industrial uses proposed in the Project. While CARB has implemented or is developing regulations that will eventually

²⁴ CARB. Public Hearing to consider the Proposed In-Use Locomotive Regulation Staff Report: Initial Statement of Reasons. Appendix F. Page 52, 57. Accessible at:

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/appf.pdf>

²⁵ California Air Resources Board (CARB), 2020. CARB's Zero and Near Zero-emission Freight Facility Program. Accessible at <https://ww2.arb.ca.gov/news/carb-announces-more-200-million-new-funding-clean-freight-transportation#:~:text=The%20goal%20of%20CARB's%20Zero,commercialization%20of%20these%20technologies%20statewide>

²⁶ LAHD, 2018. Berths 97-109 (China Shipping Container Terminal Recirculated Draft Environmental Impact Report. Page 2-13. Table 2-3. Accessible at https://kentico.portoflosangeles.org/getmedia/7acf4b8e-3663-45df-a080-b276ee338e86/02_CS_Project_Description_RDSEIR

²⁷ Zero-Emission Truck and Bus Voucher Incentive Project. Accessible at: <https://californiahvip.org/>

require the use of zero-emission trucks (as noted above), the Project must plan for this transition, and the Revised SEIR should explain how the Project will achieve this transition. CARB also urges the LAHD and China Shipping to incorporate all feasible measures to facilitate and incentivize zero-emission trucks within the Project site. As an additional example, Project currently has a lane that prioritizes entry to the terminal for zero-emission trucks. The Revised SEIR should consider additional priority entry lanes for zero-emission trucks.

The list below details the CARB regulations that will result in the reduction of Diesel PM and NOx emissions from trucks within California:

- **Drayage Truck Regulation:** The existing Drayage Truck Regulation requires all drayage trucks to operate with an engine that is a 2007 model year or newer.
- **Truck and Bus Regulation:** The Truck and Bus Regulation requires all trucks, including drayage, to have 2010 or newer model year engines by January 1, 2023.
- **Heavy-Duty Low-NOx Omnibus Rule:** The Heavy-Duty Low-NOx Omnibus Rule requires truck emission standards to be reduced from 0.20 to 0.05 grams per brake horsepower-hour (g/bhp-hr) from 2024 to 2026, and to 0.02 g/bhp-hr in 2027.
- **Advanced Clean Trucks Regulation:** The Advanced Clean Trucks Regulation, approved by CARB on June 25, 2020, requires manufacturers to start manufacturing zero-emission trucks and vans beginning in 2024. The rule is expected to result in about 100,000 zero-emission trucks in California by the end of 2030 and about 300,000 by 2035. The Advanced Clean Trucks regulation is part of CARB's overall approach to accelerate use of zero-emission medium- and heavy-duty vehicles. CARB approved amendments to the Advanced Clean Trucks regulation in March 2021; the amendments help ensure that more zero-emission vehicles are brought to market. CARB directed staff to ensure that fleets, businesses, and public entities that own or direct the operation of medium- and heavy-duty vehicles in California purchase and operate ZEVs in anticipation of fully ZEV fleets by 2045 everywhere feasible, and specifically to reach:
 - 100% zero-emission drayage trucks, last mile delivery, and government fleets by 2035
 - 100% zero-emission refuse trucks and local buses by 2040
 - 100% zero-emission capable utility fleets by 2040
- **Advanced Clean Fleets Regulation:** The Advanced Clean Fleets Regulation is part of CARB's overall strategy to accelerate use of zero-emission medium- and heavy-duty vehicles. This regulation works in conjunction with the Advanced Clean Trucks regulation. The regulation applies to trucks performing drayage operations at seaports and railyards, fleets owned by State, local, and federal government agencies, and high priority fleets. High priority fleets are those entities that own, operate, or direct at least one vehicle in California, and that have either \$50 million or more in gross annual revenue, or that own, operate, or have common ownership or

control of a total of 50 or more vehicles. The regulation affects medium- and heavy-duty on-road vehicles with a gross vehicle weight rating greater than 8,500 pounds, off-road yard tractors, and light-duty mail and package delivery vehicles. All drayage trucks entering seaports and intermodal railyards would be required to be zero-emission by 2035.

With the implementation of the regulations listed above, specifically the Advanced Clean Trucks Regulation, LAHD and China Shipping would over time be required stop using diesel trucks and vans and begin using zero-emission trucks. To protect the air quality of the communities near the Project site, CARB urges the LAHD and China Shipping to include all feasible project design features and/or mitigation measures in the Revised SEIR that would facilitate the transition to exclusively zero-emission trucks.

The Revised SEIR Should Require All Cargo Handling Equipment to be Zero-Emission

The operation of the Project would require cargo handling equipment (CHE) such as top picks, side picks, yard tractors, and rubber-tired gantry cranes. In developing the Revised SEIR, LAHD must reevaluate the CHE-related mitigation measures in the previous EIR, specifically MMs AQ-15, MM AQ-16, and MM AQ-17, which would require the transition to cleaner diesel-powered CHE operating within the Project site. Although these mitigation measures would somewhat reduce the Project's air quality impact, diesel-powered CHE operating within the Project site would continue to expose nearby communities and onsite works to diesel PM emissions that could significantly impact health. Furthermore, in the intervening years since the last SEIR, there have been notable advances in zero-emission cargo handling equipment.

To reduce the proposed Project's air quality, health risk and greenhouse gas impacts, CARB urges the LAHD and China Shipping to include a project design feature or mitigation measure in the Revised SEIR that would require all CHE operating within the Project site to be zero-emission. Zero-emission CHE are commercially available and can be purchased using incentive funding from CARB's Clean Off-Road Equipment Voucher Incentive Project (CORE) administered by CALSTART or the HVIP.^{28,29,30}

²⁸ CARB Cargo Handling Equipment Commercial Availability List. Accessible at: <https://ww2.arb.ca.gov/our-work/programs/cargo-handling-equipment/zero-emission-che-availability>

²⁹ Clean Off-Road Equipment Voucher Incentive Project. Accessible at: <https://californiacore.org/how-toparticipate/>

³⁰ Zero-Emission Truck and Bus Voucher Incentive Project. Accessible at: <https://californiahvip.org/>

The Revised SEIR Should Require All Transport Refrigeration Units to be Zero-emission Where Feasible and Plug-In Capable Everywhere Else

Based on CARB staff's review of the NOP for the Revised SEIR and 2018 RSEIR, it is unclear whether the trucks and railcars serving the Project would be equipped with transport refrigeration units (TRU). TRUs on trucks and trailers, and on railcars, can emit large quantities of diesel exhaust while operating in and around the Project site. Residences and other sensitive receptors (e.g., daycare facilities, senior care facilities, and schools) located near where these TRUs could be operating, would be exposed to Diesel PM emissions that would result in a significant cancer risk impact to the nearby community.

On February 24, 2022, CARB approved the amendments to the Transportation Refrigeration Unit Airborne Toxic Control Measure (2022 TRU ATCM Amendments).³¹ The TRU ATCM is an initiative aimed at reducing air pollutant and greenhouse gas emissions and improving air quality in the transportation sector. The 2022 TRU ATCM Amendments require newly manufactured truck TRUs, trailer TRUs, and domestic shipping container TRUs to use refrigerant with a global warming potential less than or equal to 2,200, or no refrigerant at all, beginning December 31, 2022. Beginning December 31, 2023, TRU owners will be required to turn over at least 15% of their truck TRU fleet operating in California to zero-emission technology each year for seven years, and all truck TRUs operating in California are required to be zero-emission by December 31, 2029. CARB staff are developing concepts for new requirements to use zero-emission non-truck TRUs (trailer TRUs, domestic shipping container TRUs, railcar TRUs, and TRU generator sets).

The Revised SEIR should specify whether transporting or handling cold storage is part of the Project. If the Project is used to transport cold storage, CARB urges the LAHD and China Shipping to require all TRUs on trucks and trailers to be zero-emission to protect the health of communities and to stay in step with current and upcoming CARB regulations. All rail cars with plug-in-capable TRUs entering the Project should be plugged into electric power until they are ready to be transported directly out of the facility. Lastly, the LAHD and China Shipping should require all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with plug-in-capable TRU or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a diesel engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.

³¹ CARB. Transportation Refrigeration Unit (TRU or Reefer) Regulation. Accessible at: <https://ww2.arb.ca.gov/our-work/programs/truckstop-resources/truckstop/regulations/transport-refrigeration-unit-tru-or#:~:text=Regulation%20Background,risk%20from%20diesel%2Dpowered%20TRUs>.

The Revised SEIR Must Incorporate All Feasible GHG Mitigation

As proposed in the 2019 SEIR, Lease Measure GHG-1 only required the Port to contribute an amount sufficient to offset *one* year of greenhouse gas emissions from the project- an amount wholly inadequate given the Project has already involved, and will continue to involve, operations well beyond a single year.³² Furthermore, the measure does not specify which type(s) of offset credits can be purchased.

Under CEQA, a lead agency may not approve a project that will have significant environmental impacts unless it finds that alternatives and mitigation measures to reduce environmental impacts are infeasible based on specific economic, legal, social, technological or other considerations. (Pub. Res. Code, §§ 21002; 21061.1.) “‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.” (*Id.*, § 21061.1.)

The 2018 RSEIR found that the Project would result in 183,231 tons of carbon dioxide equivalent (CO₂e) in the year 2030, far exceeding the SCAQMD’s 10,000 tons of CO₂e significance threshold; ultimately resulting in a significant and unavoidable impact on climate change.³³ Since there have been little to no changes in the Project’s operations, it is very likely that the Revised SEIR will have similar GHG impacts as found in the 2018 RSEIR. Consequently, the Project will have significant greenhouse gas impacts that are not fully mitigated by existing measures. As such, the Port must mitigate GHG to the extent feasible for the reasonably foreseeable operational life of the Project.

The NOP indicates that the Revised SEIR will analyze the Project’s GHG impacts, and will identify any mitigation measures that are available and feasible to mitigate those impacts. To that end, CARB suggests above several additional feasible mitigation measures that LAHD can adopt to much more fully mitigate the Project’s significant emissions impacts, including its greenhouse gas emissions. LAHD should incorporate these measures in the Revised SEIR. LAHD should also consider additional feasible greenhouse gas mitigation. For further information regarding how to properly analyze and feasibly mitigate the Project’s greenhouse gas emissions, the Local Actions Appendix to CARB’s 2022 Scoping Plan (Appendix D) includes information on these topics to assist lead agencies with meeting their CEQA obligations.³⁴ Appendix D helps agencies identify feasible greenhouse gas mitigation, including by describing the “hierarchy” of available mitigation, starting by

³² See December 29, 2023 Opinion in *Natural Resources Defense Council, Inc. et al. v. City of Los Angeles*, (Fourth Appellate Dist. Case No. D080902) at p. 28.

³³ LAHD, 2018. Berths 97-109 [China Shipping] Container Terminal Project Revised SEIR. Page 3.2. Table 3.2-4. Accessible at https://kentico.portoflosangeles.org/getmedia/1621ba42-12a9-45c8-b11a-4389b764d34e/03-2_CS_GHG_RDSEIR

³⁴ CARB, 2022. 2022 Scoping Plan. Appendix D. Accessible at <https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-d-local-actions.pdf>.

looking for opportunities at the project site (consistent with CARB's mitigation recommendations above).

Where additional on-site mitigation is demonstrated to not be feasible, Appendix D also provides information regarding off-site GHG mitigation, and carbon offsets. The LAHD should consider this information in the Scoping Plan and all other sources relevant to CEQA greenhouse gas analysis and must ensure that it is mitigating the Project's greenhouse gas emissions to the full extent required by CEQA.

Conclusion

LAHD and China Shipping have a long history of failing to implement essential - and required - CEQA mitigation that would help protect the communities near the Project. Through the Revised SEIR, LAHD has the opportunity to reevaluate and improve the air quality analysis and mitigation measures to minimize the Project's significant air quality, toxics, and greenhouse gas impacts to the full extent feasible to protect public health. CARB strongly urges the LAHD to consider these comments when preparing the Revised SEIR.

The LAHD and China Shipping now have a unique opportunity to create jobs for Californians and to showcase a state-of-the-art zero-emission terminal that could be used as a model for other projects in the State. By building on the work of other port operators already servicing their operations with zero-emission technologies, the LAHD and China Shipping can develop a freight facility that results in economic growth without diminishing public health in nearby communities or exacerbating climate change. To this end, CARB urges the LAHD and China Shipping to incorporate all feasible measures for zero-emission switcher and line-haul locomotives, trucks, on-site CHE, and TRUs within the Project.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and GHG impacts, coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. Please note that CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

Lisa Ochsner
September 20, 2024
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CARB staff can provide assistance with zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your list of selected State agencies that will receive the Revised SEIR. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist via email at stanley.armstrong@arb.ca.gov.

Sincerely,



Matthew O'Donnell, Chief, Risk Reduction Branch

cc: State Clearinghouse
state.clearinghouse@opr.ca.gov

Yassi Kavezade, Organizer, Sierra Club
yassi.kavezade@sierraclub.org

Sam Wang, Program Supervisor, CEQA Intergovernmental Review, South Coast Air Quality Management District
swang1@aqmd.gov

Morgan Capilla, NEPA Reviewer, U.S. Environmental Protection Agency, Air Division, Region 9
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Stanley Armstrong, Air Pollution Specialist, Risk Reduction Branch

DEPARTMENT OF TRANSPORTATION

DISTRICT 7
100 S. MAIN STREET, MS 16
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*Making Conservation
a California Way of Life*

September 20, 2024

Lisa Wunder
Environmental Management Division
City of Los Angeles Harbor Department
425 S. Palos Verdes Street
San Pedro, CA 90731

RE: Berths 97-109 (China Shipping)
Container Terminal Project: NOP/EIR
GTS # 07-LA-2024-04612
SCH # 2003061153
Vic. SR 47 PM 0.841

Dear Lisa Wunder:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above-referenced project. The Draft SEIR evaluates the continued operation of the terminal under new and/or modified mitigation measures, along with an incrementally higher cargo throughput level compared to that assumed in the certified 2008 EIS/EIR for the Berths 91-109 Container Terminal Project. The analysis contained in the Draft SEIR examines whether potentially new significant environmental impacts or substantially more severe impacts would occur in the areas of Air Quality, GHG, and Ground Transportation. The City of Los Angeles Harbor Department is the Lead Agency under the California Environmental Quality Act (CEQA).

The closest state facility is SR 47. After reviewing the project's documents, Caltrans has the following comments:

Caltrans will require an Encroachment Permit for work performed within the State Right-of-way. Caltrans recommends limiting large truck travel and construction traffic to off-peak commute hours. Caltrans requires a permit for any heavy construction equipment and or materials that require the use of oversized transport vehicles on State highways. If construction traffic is expected to cause issues on any State facilities, please submit a construction traffic control plan detailing these issues for Caltrans' review.

Caltrans looks forward in reviewing the future environmental documents. If you have any questions, please feel free to contact Jaden Oloresisimo, the project coordinator, at Jaden.Oloresisimo@dot.ca.gov and refer to GTS # 07-LA-2024-04612.

Lisa Wunder
September 20, 2024
Page 2 of 2

Sincerely,

Anthony Higgins

Anthony Higgins
Acting LDR/CEQA Branch Chief

cc: State Clearinghouse

Los Angeles Unified School District

Office of Environmental Health and Safety

ALBERTO M. CARVALHO
Superintendent

CARLOS A. TORRES
Director, Environmental Health and Safety

JENNIFER FLORES
Deputy Director, Environmental Health and Safety

Sent to ceqacomment@portla.org

September 18, 2024
Lisa Wunder
Environmental Management Division
City of Los Angeles Harbor Department
425 S. Palos Verdes Street
San Pedro, California 90731

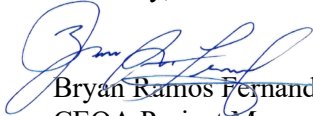
PROJECT LOCATION: Berths 97-109, Port of Los Angeles, San Pedro, California
PROJECT: Berths 197-109 [China Shipping] Container Terminal Project Revised
Supplemental EIR, Notice of Preparation

These comments are submitted on behalf of the Los Angeles Unified School District (LA Unified) regarding the Project located at Berths 97-109, Port of Los Angeles, San Pedro, California. The Project site is located 280 feet north of Harbor Occupational Center and multiple District school sites in San Pedro and Wilmington are nearby (Attachment: School Sites). As such, LA Unified is concerned about the potential negative environmental impacts of the project on students and staff.

The District requests that our schools be recognized as sensitive receptors and that the analysis in the Environmental Impact Report specifically addresses potential impacts to our school community. Specific areas of concern where the Project's construction and operation would have a significant effect on District's schools include Air Quality, Hazards and Hazardous Materials, Noise, and Transportation/Traffic (including pedestrian safety).

Please include LA Unified's Office of Environmental Health and Safety (OEHS) in the interested parties list to directly receive all notices related to this Project. The District's charge is to protect the health and safety of students and staff, and the integrity of the learning environment. Thank you for your attention to this matter. If you need additional information, please contact me at (213) 241-4210 or at ceqa-comments@lausd.net.

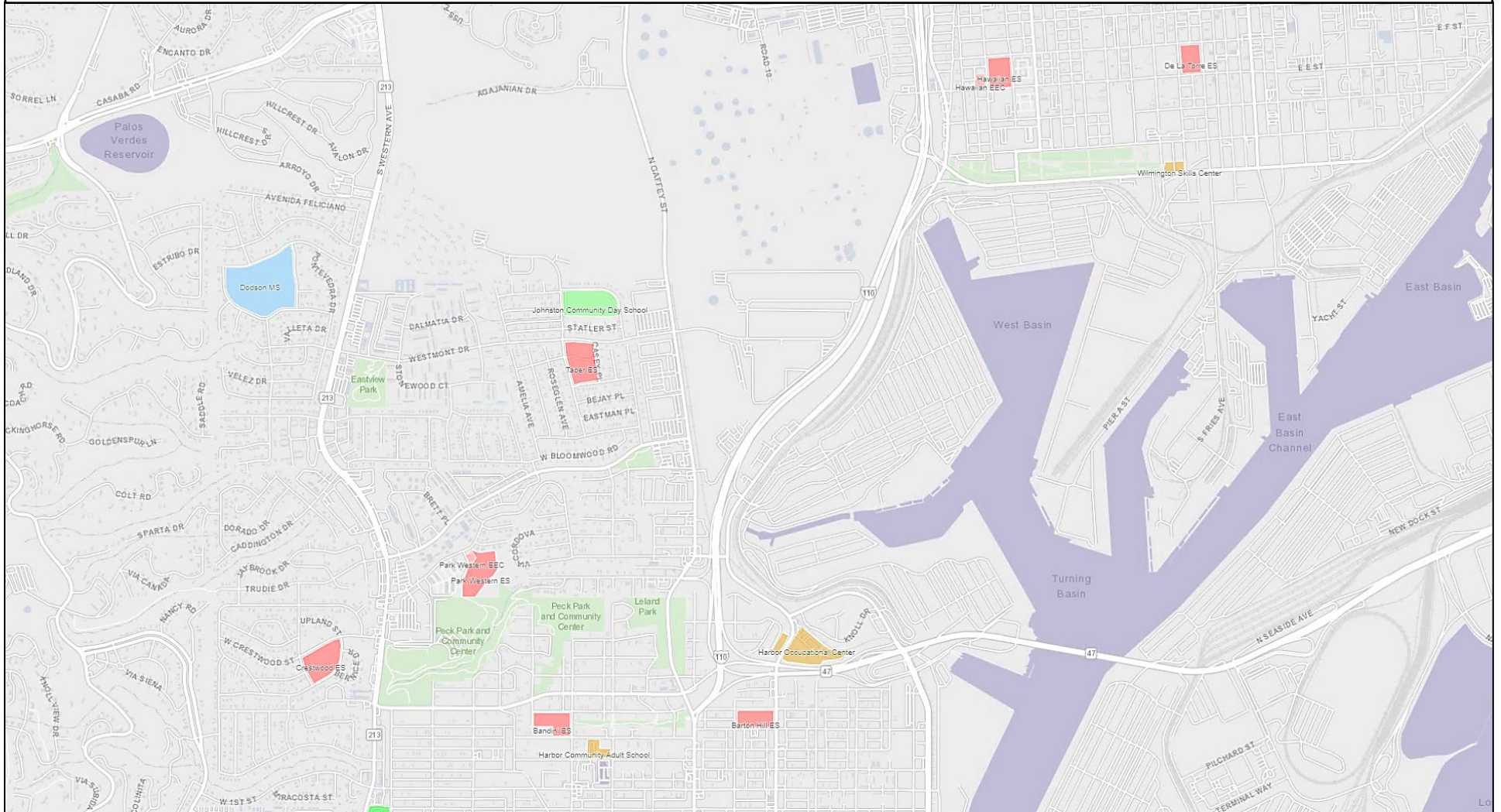
Sincerely,



Bryan Ramos Fernandez, AICP
CEQA Project Manager
Contract Professional
Los Angeles Unified School District (LAUSD)
Office of Environmental Health and Safety (OEHS)
333 S Beaudry Ave., 21ST Floor, Los Angeles, CA 90017

Attachment: LA Unified School Sites

ATTACHMENT: LA Unified SCHOOL SITES



NATIVE AMERICAN HERITAGE COMMISSION

August 29, 2024

Lisa Ochsner
City of Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro CA 90731



Re: 2003061153 BERTHS 97-109 [CHINA SHIPPING] Container Terminal Project, Los Angeles County

Dear Ms. Ochsner:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.



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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:

A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.

b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:

a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.

b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.

b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.

c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subs. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:

Andrew.Green@NAHC.ca.gov.

Sincerely,



Andrew Green
Cultural Resources Analyst

cc: State Clearinghouse



San Pedro Peninsula Homeowners United, Inc.



SAN PEDRO PENINSULA HOMEOWNERS COALITION

September 20, 2024

City of Los Angeles Harbor Department
Lisa Wunder
Environmental Management Division
425 S. Palos Verdes Street
ceqacomment@portla.org
Via Email

Re: Notice of Preparation of Draft Revised Supplemental Environmental Impact Report – Berths 97-109 [China Shipping] Container Terminal Project

Dear Lisa Wunder,

On behalf of the Natural Resources Defense Council, San Pedro Peninsula Homeowners' Coalition, San Pedro Peninsula Homeowners United, Inc., Coalition for Clean Air, and East Yard Communities for Environmental Justice (collectively, "Community Petitioners"), we provide comments on the Notice of Preparation of a Draft Revised Supplemental Environmental Impact Report for the Berths 97-109 [China Shipping] Container Terminal Project ("NOP").

After years of litigation, the Port has finally—under force of court order—started the process to revise the inadequate Supplemental Environmental Impact Report it certified in 2019 ("2019 SEIR"). However, based on the NOP, Community Petitioners are concerned that the proposed Draft Revised SEIR will continue to violate the California Environmental Quality Act ("CEQA") unless it addresses the issues set forth below.

NATURAL RESOURCES DEFENSE COUNCIL

111 SUTTER STREET | SAN FRANCISCO, CA | 94104 | T 415.875.6100 | F 415.875.6161 | NRDC.ORG

I. The Port must revise its Emissions Impact Analysis to account for both the delay in implementation of mitigation *and* the changes to that mitigation compared to the previously approved measures

The trial court found that Community Petitioners' challenge to the emissions impact analysis in the 2019 SEIR was "valid." (Trial Court Ruling at p. 7.) Specifically, the Court found that the 2019 SEIR's calculations were "incorrect and misleading" because they were based on the flawed assumption that the modified mitigation measures would be implemented in 2019. (*Id.*) As we all know, that did not happen. The Port did not make the 2019 measures enforceable when it certified the 2019 SEIR. Rather, the measures proposed in the 2019 SEIR were not adopted into the lease until July 2024. Furthermore, by then, the court had ordered the Port to reinstate some of the 2008 measures, rather than adopt the proposed 2019 measures across-the-board.

Accordingly, the Port's emissions impact analysis failed to give the public and decision makers a full and accurate understanding of the project's emissions. Under CEQA, the fundamental goal of an EIR is to inform decision makers and the public about the environmental consequences of a project. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 505.)

The NOP proposes to address the trial court's holding by changing what the Port calls the "partial implementation period"¹—the time period during which the 2008 measures were not fully implemented—from 2008-**2019** to 2008-**2024**. (NOP at p. 10.) Community Petitioners agree that the Port must disclose the excess emissions that nearby communities were exposed to during that longer 16-year period. But while that is a start, the Revised SEIR must do much more.

In particular, the Revised SEIR must show how much additional pollution the project will generate because of the Port's decision to delete or weaken previously approved mitigation measures. The Port must compare the pollution from the project that is ultimately adopted in the lease (via the sixth amendment and whatever additional mitigation is ultimately adopted at the conclusion of this

¹ Community Petitioners disagree with the Port's characterization of this "partial" implementation period. While the Port contends that most of the 2008 mitigation measures have been completed or will be completed within the time period for implementation (NOP at p. 8), it is the *environmental impact* of the unimplemented measures—not the *number* of those measures—that matters. For example, that the Port implemented many smaller measures in no way makes up for the Port's failure to implement key air quality measures, such as the Alternative Maritime Power for ships at berth or cargo handling equipment requirements. Thus, the Port's repeated statements that most of the 2008 mitigation measures were implemented during this period is misleading.

Revised SEIR process) to the levels of pollution that would have occurred under the previously approved project (as reviewed in the 2008 EIR, and incorporating the mitigation found feasible in that document). (See, e.g., *Am. Canyon Cmty. United for Responsible Growth v City of Am. Canyon*, 145 Cal. App. 4th 1062, 1073-81 (2006).) In other words, the Port must disclose the “delta” between the emissions from the project as proposed to be mitigated in 2008 and the project as it will actually be mitigated when this Revised SEIR process is complete—taking into account the many mitigation measures that were either deleted entirely (such as LNG Trucks) or significantly scaled back (various cargo handling equipment measures). Only with such analysis will the public and decision makers have a full understanding of the emissions impact of the project under modified mitigation measures.

Finally, the Port now has years of experience in determining whether its modeling corresponds with reality. What do those emissions monitoring data show compared to the Port’s predictions in past environmental review documents? The Port should disclose and analyze how its modeling bears out in the real world, and it should ensure that any future monitoring is sufficient to determine compliance with all mitigation measures.

II. The Port must analyze and adopt all feasible mitigation measures for greenhouse gas emissions

Under CEQA, a lead agency may not approve a project that will have significant environmental impacts unless it finds that alternatives and mitigation measures to reduce environmental impacts are infeasible based on specific economic, legal, social, technological or other considerations. (Pub. Res. Code, §§ 21002; 21061.1.) “‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.” (*Id.*, § 21061.1.) There is no dispute here that the project will have significant greenhouse gas impacts that are not fully mitigated by existing measures.

As proposed in the 2019 SEIR, Lease Measure GHG-1 required China Shipping to make yearly contributions of \$250,000 for eight years (for a total of \$2 million) to a “Greenhouse Gas Fund.” Petitioners challenged this measure because the Port had failed to show in the 2019 SEIR that more mitigation was not feasible. Most significantly, the total amount the Port proposed to collect from China Shipping—\$2 million—was woefully insufficient, offsetting only *one* year of greenhouse gas emissions from the project. (Court of Appeal Opinion at p. 28.) Furthermore, the measure fails to contain restrictions on where the offsets may be purchased, and thus fails to ensure that the offsets are real, “enforceable,” and “not otherwise required.” (See Guidelines, § 15126.4, subs. (a)(2), (c)(3).)

The Port’s primary defense was that because it called the measure a “lease measure” in the 2019 SEIR, the measure did not need to meet CEQA’s legal requirements for mitigation measures. (Court of Appeal Opinion at pp. 28–29.) But the Court of Appeal squarely rejected the Port’s “lease measure” argument, finding that because the Port relied on the measure to mitigate impacts, its decision to make the “measure a lease measure rather than a mitigation measure is not supported by substantial evidence.” (Court of Appeal Opinion at p. 26; see also *id.* at pp. 29–30.) The Court of Appeal also agreed with Community Petitioners that “the 2019 SEIR effectively concedes that it is economically feasible for China Shipping to pay *at least* \$2 million to address GHG emissions.” (Court of Appeal Opinion at p. 35.) In short, the measure was not only procedurally deficient in that it was not made enforceable—it was substantively deficient as well.

In the NOP, the Port concedes it must identify any feasible measures to mitigate the project’s significant greenhouse gas impacts. (NOP at p. 10.) Community Petitioners agree. The Port must consider not only more funding for the greenhouse gas fund and better safeguards for that fund, but also all other feasible greenhouse gas mitigation measures as well. (See Pub. Res. Code, §§ 21002; 21061.1 [requiring all feasible mitigation]; see also *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 880 [noting the “relevant finding” for certifying a CEQA document despite significant environmental effect “is that no additional feasible mitigation measures were available”].)

III. The Port must analyze all feasible mitigation measures for at-berth emissions

In its Ruling, the trial court held that the Port’s proposed revision to the 2008 EIR mitigation measure AQ-9 – Alternative Maritime Power (“AMP”) was not supported by substantial evidence. (Trial Court Ruling at p. 10.) The trial court also addressed Community Petitioners’ separate challenge, included in their comments on the 2019 SEIR, that the Port failed to adopt all feasible mitigation for at-berth emissions. (*Id.* at p. 13.) Specifically, Community Petitioners challenged AQ-9 on the basis that it failed to adopt all feasible at-berth mitigation that would reduce emissions further than the original 2008 EIR AQ-9 or the 2019 SEIR modified AQ-9.

The Court granted Petitioners’ petitions “challenging the Port’s failure to adopt all feasible measures to mitigate the Revised Project’s at-berth emissions[.]” (Trial Court Ruling at p. 13.) The Writ effectuates those parts of the Ruling by ordering immediate implementation of the unmodified 2008 EIR version of AQ-9 and by ordering reevaluation of the at-berth emissions mitigation in a revised environmental review document. (Writ at ¶ 1.a.i.; *id.* at ¶ 2.a.ii.) Accordingly, the Port is required to reevaluate AQ-9 and adopt all feasible mitigation to address at-berth emissions. (NOP at p. 10.)

For example, the Port should analyze the following issues:

- An AMP measure that requires 100% compliance for *all* vessels at the terminal except for enumerated emergencies
- What the definition of “emergency” is and why that definition is being used
- A plan to address any noncompliance and/or emergency-related incidents, to prevent those incidents from reoccurring
- How to eliminate instances in which vessels are unable to AMP because other ships are AMPing, either through scheduling or other means
- How to eliminate calls by non-AMP capable ships, either through contracting requirements or other means
- Any obstacles to compliance caused by the electricity grid, such as insufficient electricity and/or power outages, and how those obstacles can be addressed
- The definition of “hoteling” and the time period the ships need to be connected while at berth
- Ensuring that vessels are drawing electrical power for the entire time they are supposedly AMPing
- Whether alternatives to AMPing, such as bonnet systems, are necessary and explaining why they are necessary

These are just a few examples of how the Port should investigate and analyze mitigation measures that will mitigate at-berth emissions to a less than significant level. Given the number of vessels that visit the terminal, the length of time these larger vessels will be docked for offloading, and the amount of emissions released while vessels are at berth, requiring 100% of vessels to mitigate at-berth emissions—and ensuring that any exceptions are minimized—would meaningfully reduce emissions at the terminal.

IV. Conclusion

Community Petitioners respectfully request that the Port consider these comments as it prepares the Draft Revised SEIR. This project has been operating in violation of CEQA since 2001. The surrounding community has been exposed to illegal air pollution for far too long. The Port must rectify those violations and bring the terminal into compliance with CEQA as soon as possible.

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Sincerely,

A handwritten signature in cursive script, appearing to read "Jaclyn H. Prange".

Jaclyn H. Prange
Margaret Hsieh
Natural Resources Defense Council

Counsel for Natural Resources Defense Council, San Pedro Peninsula Homeowners' Coalition, San Pedro Peninsula Homeowners United, Inc., Coalition for Clean Air, and East Yard Communities for Environmental Justice