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April 7, 2020

***Via E-Mail***

Members of the Los Angeles City Council  
c/o City Clerk  
Los Angeles City Council  
200 N. Spring Street  
City Hall – Room 360  
Los Angeles, CA 90012  
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**RE: Appeals from the Board of Harbor Commissioners' Certification of the Final Supplemental Environmental Impact Report for Berths 97-109 (China Shipping) Container Terminal Project and Approval of the Revised Project**

**APP No. 150224-504; SCH No. 2003061153, Board Resolution No. 19-9548;  
Council File 19-1263**

Dear City Council Members:

The Attorney General of the State of California applauds the ongoing efforts of the City of Los Angeles to keep its citizens safe, healthy, and informed in these unprecedented times. We appreciate that the City is being called upon to meet the urgent needs arising from the Novel Coronavirus (COVID-19) pandemic, while maintaining ongoing governmental functions and caring for their loved ones. The Attorney General further recognizes the unique challenges that the Port of Los Angeles must face in order to ensure the supply of necessary goods to and from the region. We thank you for your continued service to the public.

The Attorney General submits these comments regarding the October 8, 2019 decisions of the Board of Harbor Commissioners (“Board”) to certify the Final Supplemental Environmental Impact Report (“SEIR”) for the revised China Shipping Container Terminal Project (“Revised Project”) and to approve the Revised Project, which are the subject of two appeals currently pending before you.<sup>1</sup> We recognize the important economic role that the Port

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<sup>1</sup> The Attorney General submits this letter pursuant to his “unique authority to protect the environment of the State of California” and “to intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects

of Los Angeles (“Port”) plays as the largest container port in the nation and we appreciate the Port’s efforts to address air emissions associated with its operations.<sup>2</sup> We also appreciate the Port’s willingness to share information regarding the Revised Project with the Attorney General’s Office. However, as explained below, we are concerned that the SEIR does not comply with the requirements of the California Environmental Quality Act (“CEQA”) to fully analyze and mitigate the adverse environmental impacts of the Revised Project. As a result, nearby disadvantaged communities will be subjected to the Revised Project’s environmental impacts, including health impacts, which could have been reduced or avoided if the Revised Project had undergone the environmental review and mitigation that CEQA requires.

We respectfully urge the Los Angeles City Council to reject the Board’s certification of the SEIR and approval of the Revised Project. In addition, we request that you require the Port to conduct additional analysis and modify the Revised Project to mitigate the significant impacts caused by the operation of the China Shipping Container Terminal.

## BACKGROUND

### I. THE CHINA SHIPPING PROJECT AND THE AIR QUALITY MITIGATION MEASURES INCLUDED IN THE 2008 EIR

In 2008, the Board approved the construction and operation of the China Shipping Container Terminal (“China Shipping Project”) at the Port.<sup>3</sup> The China Shipping Container Terminal is operated by the West Basin Container Terminal Company pursuant to a lease agreement between China Shipping (North America) Holding Co., Ltd. (“China Shipping”) and the Port.<sup>4</sup>

The South Coast Air Basin, which includes the Port and the surrounding area, fails to meet the National Ambient Air Quality Standards (“NAAQS”) for ozone and fine particulate matter (“PM<sub>2.5</sub>”), due in part to emissions from Port operations.<sup>5</sup> Several regional air quality plans have been developed to address the air pollution affecting residential areas surrounding the

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which could affect the public generally.” (Gov. Code, §§ 12600, subd. (b), 12606; *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 476.)

<sup>2</sup> *About the Port of Los Angeles*, PORT OF LOS ANGELES, <https://www.portoflosangeles.org/about> (last visited Feb. 19, 2020).

<sup>3</sup> Berth 97-109 Container Terminal Project – Final EIS/EIR, PORT OF LOS ANGELES (Dec. 2008) pp. 1-1 to 1-2 (hereafter 2008 EIR); *About the Port of Los Angeles*, PORT OF LOS ANGELES, <https://www.portoflosangeles.org/about> (last visited Feb. 19, 2020).

<sup>4</sup> *Final Supplemental Environmental Impact Report*, PORT OF LOS ANGELES (Sep. 2019) p. 1-5 (hereafter SEIR).

<sup>5</sup> *Recirculated Draft Supplemental Environmental Impact Report*, PORT OF LOS ANGELES (Sep. 2018) p. 3.1-10 (hereafter 2018 RDSEIR).

Port, including the 2016 Air Quality Management Plan,<sup>6</sup> the Clean Air Action Plan 2017 Update,<sup>7</sup> and the Wilmington/West Long Beach/Carson Community Emission Reduction Program.<sup>8</sup>

In 2008, the Board certified the Final Environmental Impact Statement/Environmental Impact Report (“2008 EIR”) for the China Shipping Project, which contained 52 mitigation and lease measures adopted to avoid or reduce the China Shipping Project’s significant impacts, including impacts to air quality.<sup>9</sup> As acknowledged in the SEIR, however, the Port has failed to fully implement several mitigation measures, including Mitigation Measures AQ-9, AQ-10, AQ-15, AQ-16, AQ-17, and AQ-20, all designed to reduce the China Shipping Project’s significant air quality impacts.<sup>10</sup> These unimplemented mitigation measures are summarized below.

Mitigation Measure AQ-9 mandated that China Shipping ships progressively increase their use of alternative maritime power to reduce emissions produced by their auxiliary engines while stationary at the dock.<sup>11</sup> Under AQ-9, 100% of China Shipping ships were required to utilize alternative maritime power while docked at the terminal by January 2011. In addition, by 2010, all ships retrofitted for alternative maritime power were required to use such power while docked at the terminal, except when a berth with alternative maritime power capability was unavailable because it was in use by another ship.<sup>12</sup>

Mitigation Measure AQ-10 required all ships calling at the China Shipping Container Terminal to comply with the Port’s expanded Vessel Speed Reduction Program. The expanded Vessel Speed Reduction Program imposes a 12-knot speed limit within a 40-nautical-mile radius

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<sup>6</sup> *Final 2016 Air Quality Management Plan*, SOUTH COAST AIR MANAGEMENT DISTRICT (Mar. 2017) (hereafter 2016 AQMP), <https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/final2016aqmp.pdf?sfvrsn=15>.

<sup>7</sup> *San Pedro Bay Ports Clean Air Action Plan 2017 Update*, SAN PEDRO BAY PORTS (Nov. 2017) pp. 25-26 (hereafter CAAP 2017 Update), <https://cleanairactionplan.org/documents/final-2017-clean-air-action-plan-update.pdf>.

<sup>8</sup> *Community Emissions Reduction Plan: Wilmington, Carson, West Long Beach*, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (Sep. 2019) pp. 3a-8, 3b-29 to 3b-30, 5a-1 to 5a-3 (hereafter CERP), <https://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2019/2019-sep6-025c.pdf?sfvrsn=6>.

<sup>9</sup> SEIR at 1-6.

<sup>10</sup> *Id.* at 1-7.

<sup>11</sup> SEIR at 1-8.

<sup>12</sup> *Id.*

of Point Fermin, which is located just outside the Port.<sup>13</sup> Mitigation Measure BIO-2 imposed the same requirement to address impacts on biological resources.

Mitigation Measure AQ-15 required all yard tractors operated at the China Shipping Container Terminal to run on liquefied petroleum gas between 2004 and 2014, and starting in 2015, required all yard tractors to utilize the cleanest available alternative-fueled engine meeting the United States Environmental Protection Agency's ("US EPA") Tier 4 Final standard requirements.<sup>14</sup> "Tier 4 compliant engines significantly reduce emissions of particulate matter and oxides of nitrogen to near zero levels."<sup>15</sup>

Mitigation Measure AQ-16 required all cargo-handling equipment utilized at the China Shipping Container Terminal with less than 750 horsepower to meet US EPA's Tier 4 on-road or Tier 4 non-road engine emission standards by the end of 2012.<sup>16</sup> By the end of 2014, all diesel-powered equipment operated at the China Shipping Container Terminal rail yard that handles containers moving through the terminal was required to meet US EPA Tier 4 non-road engine standards.<sup>17</sup>

Mitigation Measure AQ-17 mandated that various yard equipment operated at the China Shipping Container Terminal, including diesel-powered topicks and sidepicks, rubber-tyred gantry cranes, and yard tractors, utilize progressively cleaner engines that reduce nitrogen oxides ("NOx") and particulate matter ("PM") emissions.<sup>18</sup> By the end of 2014, all terminal equipment, other than yard tractors, rubber-tyred gantry cranes, and topicks, was required to meet US EPA's Tier 4 non-road engine standards.<sup>19</sup> In addition, AQ-17 required that China Shipping participate in a one-year electric yard tractor (truck) pilot project, deploying two electric tractors at the terminal within one year of lease approval.<sup>20</sup> If that pilot project was successful in terms of operation, costs and availability, China Shipping was required to replace half of its yard tractors with electric tractors within 5 years.<sup>21</sup>

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<sup>13</sup> *Id.* For more information regarding the program, see *Vessel Speed Reduction Incentive Program Guidelines*, PORT OF LOS ANGELES, [https://kentico.portoflosangeles.org/getmedia/e5d65b7b-3b61-43a4-952a-3d7a044bd5da/vsr\\_program\\_overview\\_2018](https://kentico.portoflosangeles.org/getmedia/e5d65b7b-3b61-43a4-952a-3d7a044bd5da/vsr_program_overview_2018) (last visited Dec. 16, 2019).

<sup>14</sup> SEIR at 1-8.

<sup>15</sup> *Tier 4 Standards*, DIESEL TECHNOLOGY FORUM, <https://www.dieselforum.org/policy/tier-4-standards> (last visited Mar. 3, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> SEIR at 1-8.

<sup>18</sup> *Id.* at 1-9.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Mitigation Measure AQ-20 required heavy-duty trucks entering the China Shipping Container Terminal to be fueled by liquefied natural gas at the following rate: 50% of trucks in 2012 and 2013, 70% in 2014-2017, and 100% in 2018 and thereafter.<sup>22</sup>

Due to the Port's acknowledged failure to implement these mitigation measures, the China Shipping Project's impacts on air quality and public health have continued for more than a decade without the implementation of all feasible mitigation. As discussed in detail below, the SEIR eliminates or weakens the 2008 EIR's unimplemented air quality mitigation measures, potentially exacerbating regional air pollution and increasing the exposure of communities near the Port to additional harmful air pollutants in the future. For the reasons set forth in this letter, the Port's elimination and weakening of previously adopted, feasible mitigation measures in the SEIR violates CEQA requirements.

## II. DISADVANTAGED COMMUNITIES IMPACTED BY THE CHINA SHIPPING PROJECT

Many communities in Wilmington, Carson, Long Beach, and San Pedro, the cities located closest to the China Shipping Container Terminal, are low income communities and communities of color that are already exposed to disproportionately high amounts of air pollution. According to CalEnviroScreen, the California Environmental Protection Agency's screening tool that ranks each census tract in the state for pollution and vulnerability, the residents of San Pedro and Wilmington living nearest to the China Shipping Container Terminal are worse off than 95 percent of the state's residents when considering their exposure to pollution combined with their vulnerability to that pollution.<sup>23</sup> Of particular concern and relevance to the China Shipping Container Terminal, the nearby communities are exposed to more diesel particulate matter ("diesel PM") than 96 percent of the state.<sup>24</sup> Diesel PM is produced as exhaust from trucks, trains, ships, and other diesel-powered equipment, and constitutes the largest contributor to cancer risk from air pollution.<sup>25</sup> Given that exposure to air pollution contributes to human health concerns including asthma and low birth weight, it is not surprising that the communities near the Port experience these vulnerabilities at much higher rates than the rest of the state. The census tract nearest to the Revised Project has more low-birth-weight babies than 94 percent of the state and more asthma-related hospital visits than 88 percent of the state.<sup>26</sup> The communities nearest to the China Shipping Container Terminal also have high poverty rates, ranking worse off than 88 percent of the state, and are predominately

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<sup>22</sup> *Id.*

<sup>23</sup> *CalEnviroScreen 3.0*, CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited Nov. 9, 2019).

<sup>24</sup> *Id.*

<sup>25</sup> 2016 AQMP at 9-4 ["diesel particulate matter (DPM) [] is responsible for over 70 percent of the associated air emission cancer risk in the [South Coast Air] Basin"].

<sup>26</sup> *CalEnviroScreen 3.0*, CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited Nov. 9, 2019) [See census tract 6037296210].

made up of people of color.<sup>27</sup> More than 92 percent of students who attend the nearest elementary school, Barton Hill Elementary, which is just half a mile from the China Shipping Container Terminal, qualify for free or reduced lunch.<sup>28</sup> Thus, the many residents that live in close proximity to the China Shipping Container Terminal are already exposed to significant amounts of pollution and are particularly vulnerable to that pollution.

### **THE SEIR FAILS TO COMPLY WITH CEQA**

As discussed in detail below, the SEIR does not comply with the requirements of CEQA and undermines CEQA's primary purposes: informing governmental decision makers and the public about the potential environmental impacts of a proposed project; identifying ways to avoid or reduce environmental damage; preventing avoidable environmental damage by requiring the use of alternatives or mitigation measures when feasible; and disclosing to the public the reasons for approval of a project that may significantly impact the environment. (Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, § 15002, subd. (a)<sup>29</sup>; *Center for Biological Diversity v. Cal. Dept. of Conservation* (2019) 36 Cal.App.5th 210, 225.).

#### **I. THE SEIR FAILS TO PROVIDE SUBSTANTIAL EVIDENCE SUPPORTING THE REMOVAL AND REVISION OF AIR QUALITY MITIGATION MEASURES AND DOES NOT IMPOSE ALL FEASIBLE MITIGATION**

Pursuant to CEQA, the lead agency must identify potential mitigation measures to reduce or avoid the proposed project's significant environmental impacts and must adopt those mitigation measures "whenever it is feasible to do so." (Pub. Resources Code, §§ 21002, 21002.1, subs. (a)-(b).) "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (*Id.* at § 21061.1.) After a mitigation measure has been adopted, the lead agency "must state a legitimate reason for deleting [the] mitigation measure, and must support that statement of reason with substantial evidence. In other words, the measure cannot be deleted without a showing that it is infeasible." (See *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359 ("*Napa Citizens*").)

Over a decade ago, the Port adopted air quality mitigation measures in the 2008 EIR, concluding that they were "feasible means to reduce air pollution impacts from proposed operational sources" at the China Shipping Container Terminal.<sup>30</sup> Six of these mitigation measures were not fully implemented. In preparing the SEIR, the Port weakened five of these

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<sup>27</sup> *Id.*

<sup>28</sup> *Barton Hill Elementary*, INSTITUTE OF EDUCATION SCIENCES, NATIONAL CENTER FOR EDUCATION STATISTICS, [https://nces.ed.gov/ccd/schoolsearch/school\\_detail.asp?Search=1&SchoolID=062271002839&ID=062271002839](https://nces.ed.gov/ccd/schoolsearch/school_detail.asp?Search=1&SchoolID=062271002839&ID=062271002839) (last visited Mar. 3, 2020).

<sup>29</sup> The regulations implementing CEQA are found in Title 14 of the California Code of Regulations, section 15000 et seq. (hereafter CEQA Guidelines).

<sup>30</sup> 2008 EIR at FOF-69.

measures and removed one measure without replacing it with an alternative.<sup>31</sup> Specifically, as discussed below, the Port did not include Mitigation Measure AQ-20 in the SEIR, failed to show that it is infeasible, and failed to replace it with an alternative measure. (See *Napa Citizens, supra*, 91 Cal.App.4th 342, 359.) In addition, the Port weakened mitigation measures adopted in the 2008 EIR (AQ-9, AQ-10, AQ-15, AQ-16, and AQ-17) and failed to show that the revised measures represent all feasible mitigation. By removing or weakening these measures in the SEIR and not adopting additional feasible measures to reduce or avoid the China Shipping Project's air quality, greenhouse gas (GHG), and biological resources impacts, the Port has not adopted all feasible mitigation measures. As a result, the SEIR fails to comply with CEQA.

#### A. AQ-9: Alternative Maritime Power

Emissions produced by ship auxiliary engines during the loading and unloading of cargo are a significant contributor of air pollution.<sup>32</sup> As included in the 2008 EIR, Mitigation Measure AQ-9 required 100% of China Shipping ships to use alternative maritime power while docked at the China Shipping Container Terminal. The measure also required all ships capable of utilizing alternative maritime power to do so while docked at the terminal, unless an alternative maritime power-capable berth was unavailable due to utilization by another ship. While the SEIR expands application of Mitigation Measure AQ-9 to all ships calling at the terminal, it also weakens the measure by providing broad exceptions to the alternative maritime power requirement.<sup>33</sup> In addition to these exceptions, the SEIR further weakens the measure by allowing 5% of all ships calling at the China Shipping Container Terminal to forgo the use of alternative maritime power even in the absence of an enumerated exception.<sup>34</sup> Furthermore, although under the SEIR Mitigation Measure AQ-9 calls for the use of an equivalent alternative emission capture system where an exception to the alternative maritime power requirement applies, the exceptions to this requirement are so broad that they may swallow the rule.<sup>35</sup> As a result, the revised measure

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<sup>31</sup> SEIR at FOF-3 to FOF-8.

<sup>32</sup> *San Pedro Bay Ports Clean Air Action Plan 2017 Update*, SAN PEDRO BAY PORTS (Nov. 2017) p. 61 (hereafter CAAP 2017 Update), <https://cleanairactionplan.org/documents/final-2017-clean-air-action-plan-update.pdf> (“In 2016, 32% of [diesel PM], 29% of NOx and 53% of greenhouse gas emissions from ships in San Pedro Bay were emitted while the ships were at berth.”).

<sup>33</sup> SEIR at FOF-4. Exceptions to the requirement may be made for emergencies; if a berth equipped with alternative maritime power is unavailable; if a ship is not able to plug into alternative maritime power; or if the vessel is not capable of utilizing alternative maritime power. (*Id.*)

<sup>34</sup> *Id.*

<sup>35</sup> An alternative emission capture system need only be utilized “if feasible, based on availability, scheduling, operational feasibility, and contracting requirements between the provider of the equivalent technology and the terminal operator.” *Id.* The SEIR does not estimate the rate at which one of these exceptions will apply. However, because all terminals at the Port share one such system and the requirement may be freely contracted around, the SEIR provides little assurance that this technology will be utilized at any frequency.

allows ships calling at the China Shipping Container Terminal to completely avoid utilizing alternative maritime power or an alternative emission capture system in a number of circumstances.

The Port explains that the weakening of this mitigation measure is necessary because China Shipping will be unable to achieve a 100% compliance rate if one of the situations in the enumerated exceptions occurs.<sup>36</sup> However, the Port did not provide evidence supporting the necessity of each of the exceptions enumerated in the revised measure or indicating the frequency at which each exception will likely occur. The Port also failed to explain the necessity of further weakening Mitigation Measure AQ-9 to allow 5% of all ships calling at the China Shipping Container Terminal to bypass the use of alternative maritime power in the absence of any enumerated exception. Without this showing, it appears that more stringent versions of the measure are feasible. For example, the measure could feasibly require all ships calling at the China Shipping Container Terminal to use alternative maritime power with a 100% compliance rate, except under the enumerated exceptions, and mandate the use of an alternative emission capture system whenever alternative maritime power is not utilized. Indeed, the Port has acknowledged that China Shipping vessels have achieved overall compliance at rates exceeding 95%.<sup>37</sup> Because the Port failed to consider feasible mitigation measures that are more stringent than the revised measure, the SEIR does not meet CEQA's requirement that all feasible mitigation measures are adopted.

#### **B. AQ-10: Vessel Speed Reduction Program**

The Port has acknowledged that operating a ship at a slower speed “translates to less fuel burned and fewer emissions” and reduces the risk of harm to marine mammals.<sup>38</sup> Yet, the SEIR weakens Mitigation Measure AQ-10 to require 95%, rather than 100% of oceangoing vessels calling at the China Shipping Container Terminal to comply with the expanded Vessel Speed Reduction Program, which imposes a 12-knot speed limit within a 40-nautical-mile radius of Point Fermin.

In the SEIR, the Port justified the weakening of AQ-10 by asserting that, as a result of inclement weather, port delays, or mechanical problems, cargo ships may have an “unavoidable practical need to increase speed” in order to make up for lost time and reduce costs.<sup>39</sup> The Port added that the reduced Vessel Speed Reduction Program compliance rate is consistent with “how shipping lines at terminals have been performing,” and that it “incorporates the realities of oceangoing cargo vessel operation and the need to maintain economic competitiveness.”<sup>40</sup>

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<sup>36</sup> 2018 RDSEIR at 2-14 to 2-15.

<sup>37</sup> *Id.*

<sup>38</sup> CAAP 2017 Update at 59.

<sup>39</sup> SEIR at FOF-4; 2018 RDSEIR at 2-16.

<sup>40</sup> SEIR at 1-14.



However, the China Shipping Container Terminal has achieved higher than 95% compliance in the past.<sup>41</sup>

The Port's explanation for the relaxation of AQ-10 appears to be based on financial and operational infeasibility. To show a mitigation measure is financially infeasible, "[w]hat is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1181 (hereafter *Citizens of Goleta Valley*)). The SEIR mentions that implementing AQ-10 pursuant to the 2008 EIR could cause China Shipping to incur labor standby costs, but does not provide any evidence or analysis quantifying the projected costs or showing that they would be sufficiently severe as to render the China Shipping Project impractical.<sup>42</sup> The Port's conclusory assertions are not sufficient to show that AQ-10, as included in the 2008 EIR, is financially infeasible. (See *id.*)

The Port has also failed to support its conclusory assertion that the weakening of AQ-10 is necessary due to operational infeasibility with evidence indicating that, and how often, inclement weather or mechanical problems have caused ships to violate the expanded Vessel Speed Reduction Program in years past. Absent this showing, it appears that more protective versions of the measure are feasible. For example, based on the information provided in the SEIR, the Port could adopt a feasible mitigation measure requiring all ships calling at the China Shipping Container Terminal to comply with the expanded Vessel Speed Reduction Program, except where inclement weather or mechanical problems require a vessel to increase its speed above 12 knots. By failing to consider this mitigation measure, the Port has failed to adopt all feasible mitigation in the SEIR, as required by CEQA.

### **C. AQ-15: Yard Tractors at Berth 97-100 Terminal**

The SEIR weakens AQ-15, which, under the 2008 EIR, required yard tractors at the China Shipping Container Terminal to use the cleanest available alternative-fueled engine meeting US EPA's Tier 4 Final standard requirements. The revised mitigation measure included in the SEIR removes the January 1, 2015 compliance deadline and instead requires China Shipping to phase in the use of clean yard tractors pursuant to a protracted and uncertain implementation schedule.<sup>43</sup> The schedule for implementation is tied to the effective date of a future lease amendment between China Shipping and the Port, as well as the age of China Shipping's yard tractors. Therefore, it is unclear when full implementation of this measure will occur, if ever. Even if China Shipping and the Port amend their lease immediately, the mitigation measure will not be fully effective until 2025 at the earliest – a full decade after China Shipping was required to fully implement Mitigation Measure AQ-15 under the 2008 EIR.<sup>44</sup>

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<sup>41</sup> 2018 RDSEIR at 2-16.

<sup>42</sup> 2018 RDSEIR at 2-16.

<sup>43</sup> SEIR at 1-14.

<sup>44</sup> In addition, unlike AQ-15 included in the 2008 EIR, which applied to all yard tractors, the revised measure creates a safe harbor for yard tractors of model years 2012 or newer, regardless of whether those units meet the emissions standards set forth by the measure. (SEIR at 1-14.)

Delayed implementation weakens this mitigation measure, causing additional air pollutant emissions from the Revised Project.

The Port asserts that Mitigation Measure AS-15's the revised implementation schedule "represents the most rapid feasible deployment of this equipment," given uncertainty in the time needed to certify the SEIR and manufacture the replacement units.<sup>45</sup> However, this assertion contradicts the Port's own findings. In 2017, the Port determined that 122 yard tractors were in operation at the China Shipping Container Terminal and that 40 yard tractors could feasibly be replaced each year.<sup>46</sup> Based on this replacement rate, China Shipping could replace all of its yard tractors in roughly three years, significantly faster than required under the revised measure. And, although the Port referenced an estimate by China Shipping that it would cost around \$12.2 million to replace all yard tractors, the Port did not independently verify this estimate, nor did it analyze whether it would be financially feasible for China Shipping to replace all of its yard tractors over an expedited implementation period of three years.<sup>47</sup> In order to show that full implementation of Mitigation Measure AQ-15 immediately or over a three-year period is financially infeasible, the Port must present evidence that "the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." (*Citizens of Goleta Valley, supra*, 197 Cal.App.3d 1167, 1181.) The Port has failed to do so. Because the SEIR does not show that it is infeasible to expedite the implementation of AQ-15, the Port has not adopted all feasible mitigation measures.

#### **D. AQ-16 and AQ-17: Yard Equipment**

Mitigation Measures AQ-16 and AQ-17, as included in the 2008 EIR, imposed progressively stringent emissions standards on various equipment operated at the China Shipping Container Terminal.<sup>48</sup> These measures have been combined in the SEIR based on the Port's determination that "there is no feasible way to identify railyard, as opposed to container yard equipment."<sup>49</sup> The measures are therefore discussed together below.

Similar to the SEIR's revision of Mitigation Measure AQ-15, Mitigation Measures AQ-16 and AQ-17 have been modified in the SEIR to include protracted and uncertain implementation schedules based upon equipment age and the effective date of a new lease

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This safe harbor and any justification for its creation are not discussed in the SEIR, raising additional questions regarding whether the revised measure constitutes all feasible mitigation for purposes of CEQA.

<sup>45</sup> 2018 RDSEIR at 3.1-54 to 3.1-55.

<sup>46</sup> 2017 Draft Supplemental Environmental Impact Report, PORT OF LOS ANGELES (June 2017) pp. 2-15 to 2-16 (hereafter 2017 DSEIR).

<sup>47</sup> *Id.* at 2-15.

<sup>48</sup> These mitigation measures are summarized in Subsection I of the Background Section of this letter.

<sup>49</sup> SEIR at 1-15.

amendment.<sup>50</sup> The Port explains that the revised, phased implementation schedule “takes into account the uncertainty in the timing of the measure given the time needed to certify the SEIR and execute a new lease amendment.”<sup>51</sup> The Port further justifies the delayed implementation of this mitigation based on “high capital costs” associated with purchasing cleaner equipment.<sup>52</sup> However, the SEIR does not include any evidence regarding China Shipping’s finances or operating budget that could indicate whether the costs of expedited implementation would be “sufficiently severe as to render it impractical.” (See *Citizens of Goleta Valley, supra*, 197 Cal.App.3d 1167, 1181.) As such, the SEIR fails to show that expedited implementation of Mitigation Measures AQ-16 and AQ-17 is infeasible. By weakening these measures without showing that all feasible mitigation has been adopted, the Port violates CEQA.

#### **E. AQ-20: Liquid Natural Gas Trucks**

As included in the 2008 EIR, Mitigation Measure AQ-20 required all heavy-duty trucks entering the China Shipping Container Terminal to be fueled by liquefied natural gas (“LNG”) by 2018.<sup>53</sup> The Port removed Mitigation Measure AQ-20 based on its determination that the measure is infeasible due to “industry structural constraints, truck technology constraints, and financial constraints.”<sup>54</sup> However, the SEIR does not contain adequate support for this determination.

First, with regard to industry structural constraints, the Port explains that neither China Shipping nor the terminal operator, West Basin Container Terminal Company, is involved in drayage logistics.<sup>55</sup> However, this assertion is refuted by the Port’s inclusion in the SEIR of Lease Measure AQ-2, which mandates, “[a] priority access system shall be implemented at the [China Shipping Container Terminal] to provide preferential access to zero- and near-zero

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<sup>50</sup> SEIR at 1-16 to 1-17. Also like AQ-15, this revised measure provides safe harbors from its emissions requirements for the following types of yard equipment: 18-ton diesel forklifts of model years 2008 and newer; 5-ton diesel forklifts of model years 2012 and newer; diesel top-picks of model years 2015 and newer; diesel rubber-tyred gantry cranes of model years 2006 and newer. These safe harbors and any justification for their creation are not discussed in the SEIR, raising additional questions regarding whether the revised measure constitutes all feasible mitigation for purposes of CEQA.

<sup>51</sup> *Id.* at 1-17 to 1-18. It is important to note the Port’s acknowledgement that China Shipping may delay the amendment of its lease to incorporate the mitigation measures included in the SEIR. The approval of the Revised Project is not contingent on the execution of such an amendment, nor does the SEIR contain a limitation on this delay. As such, there is no assurance that a lease amendment will ever be executed or that the mitigation measures included in the SEIR will ever be implemented.

<sup>52</sup> *Id.* at 1-16.

<sup>53</sup> *Id.* at 1-9.

<sup>54</sup> *Id.* at 1-18 to 1-19.

<sup>55</sup> 2018 RDSEIR at 2-22.

emission trucks.”<sup>56</sup> Lease Measure AQ-2 demonstrates the terminal operator’s ability to control access to the China Shipping Container Terminal based on whether a heavy-duty drayage truck utilizes alternative fuel. Indeed, the Port acknowledges that the China Shipping Container Terminal could “[t]urn away all non-LNG-fueled trucks at the terminal gates.”<sup>57</sup>

Second, the assertion that utilizing LNG-fueled drayage trucks at the China Shipping Container Terminal is generally infeasible is belied by the Port’s own finding that in 2014, 10% of the drayage trucks port-wide were LNG-fueled.<sup>58</sup> Third, with regard to financial constraints, the Port explains that accepting only alternative-fueled drayage trucks “would place [China Shipping] and [West Basin Container Terminal Company] at a severe competitive disadvantage[.]” This conclusory assessment falls short, however, of providing “evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project,” as required by CEQA. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1181 (“*Citizens of Goleta Valley*”).) As such, the Port has failed to adequately support its determination that Mitigation Measure AQ-20 is infeasible.

Furthermore, although trucks are the second largest source of port-related NOx emissions and the largest contributor of port-related GHG emissions, the Port fails to adopt any substitute or replacement mitigation measure for AQ-20 to reduce the environmental impacts associated with the operation of diesel drayage trucks at the China Shipping Container Terminal.<sup>59</sup> The Port justifies this failure by asserting that “[t]here is no feasible substitute or replacement for requiring a terminal-specific drayage truck fleet.”<sup>60</sup> However, even if the Port is deemed to have provided sufficient evidence that 100% utilization of LNG-fueled drayage trucks at the China Shipping Container Terminal is infeasible, the Port failed to consider several feasible substitute measures to reduce the air pollutants emitted from heavy-duty drayage trucks calling at the China Shipping Container Terminal, some of which are discussed below.

The Port failed to consider a substitute mitigation measure mandating a less-than-100% LNG truck compliance rate. The feasibility of such a measure is demonstrated by the fact that 10% of the drayage trucks serving the Port are already LNG-fueled. The Port also failed to analyze the feasibility of a mandatory, port-wide phase-in of zero- and near-zero emission drayage trucks to mitigate the air quality impacts of Port operations, including the Revised Project. Such a measure could require China Shipping to commit additional funding to the Clean Trucks Program in order to expedite the port-wide switch to zero- and near-zero emission trucks. The feasibility of such a measure is demonstrated by the Port’s acknowledged ability to influence the composition of the port-wide drayage truck fleet though, *inter alia*, the Clean Trucks

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<sup>56</sup> SEIR at 1-21.

<sup>57</sup> 2018 RDSEIR at 2-22.

<sup>58</sup> *Id.* at 2-5.

<sup>59</sup> CAAP 2017 Update at 33; 2018 RDSEIR at 2-22 to 2-24.

<sup>60</sup> 2018 RDSEIR at 2-24.

Program.<sup>61</sup> In addition, to the extent that China Shipping and the West Basin Container Terminal Company own and operate a drayage truck fleet, they should be required to utilize zero- and near-zero emission trucks at the China Shipping Container Terminal.

Because the SEIR fails to adequately support its determination that Mitigation Measure AQ-20 is infeasible, and does not consider several feasible alternative measures, it falls short of incorporating all feasible mitigation and fails to meet the requirements of CEQA.

## **II. THE AIR QUALITY MITIGATION MEASURES INCORPORATED INTO THE REVISED PROJECT PURSUANT TO THE SEIR ARE NOT FULLY ENFORCEABLE**

All mitigation measures adopted in an EIR to mitigate or avoid a project's significant impacts on the environment must be "fully enforceable through permit conditions, agreements, or other measures." (Pub. Resources Code, § 21081.6, subd. (b).) Moreover, the lead agency is required to "ensure that feasible mitigation measure[s] will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 446 [internal quotation marks omitted]; see Pub. Resources Code, § 21081.6, subd. (a)(1); see also CEQA Guidelines, § 15091, subd. (d).) Yet, the Port has made clear that some of the mitigation measures incorporated into the China Shipping Project under the 2008 EIR were unenforceable, explaining that preparation of the SEIR was needed in part because "China Shipping did not sign an amendment to the lease that incorporated the mitigation measures related to operation of the [China Shipping Container] Terminal, and as a result the Port was unable to ensure implementation of those measures."<sup>62</sup>

It appears that all of the mitigation measures included in the SEIR are similarly unenforceable because their implementation is entirely contingent on the execution of a lease amendment with China Shipping and there is no guarantee that such an amendment will occur. Indeed, one day prior to the Board's certification of the SEIR, China Shipping submitted a letter to the Port stating that it had no intention of amending its lease to include the mitigation measures outlined in the SEIR unless the Port assumed the associated financial burden in its entirety.<sup>63</sup> The SEIR does not explain how the mitigation measures included in the SEIR will be implemented or enforced should China Shipping refuse to amend its lease to include the measures. As a result, the SEIR lacks evidence demonstrating that the mitigation measures, which are contingent upon a lease amendment, will actually be implemented. Because the mitigation measures included in the SEIR are not fully enforceable, the SEIR fails to comply with the requirements of CEQA.

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<sup>61</sup> *Id.* at 2-24 ["With the implementation of a new port-wide Clean Trucks Program as required by the 2017 CAAP's goal to transition to zero-emissions technologies by 2035, future emission reductions from drayage would be achieved[.]"]

<sup>62</sup> SEIR at 1-7.

<sup>63</sup> *Letter on Behalf of China Shipping (North America) Holding Co., Ltd. Concerning the SEIR, COSCO SHIPPING (NORTH AMERICA) INC.* (Oct. 7, 2019), [http://clkrep.lacity.org/onlinedocs/2019/19-1263\\_misc\\_13\\_11-07-2019.pdf](http://clkrep.lacity.org/onlinedocs/2019/19-1263_misc_13_11-07-2019.pdf).

### **III. THE SEIR DOES NOT ADEQUATELY INFORM GOVERNMENT DECISION MAKERS OR THE PUBLIC OF THE REVISED PROJECT'S ENVIRONMENTAL IMPACTS**

CEQA requires a lead agency responsible for preparing an environmental impact report to do so “with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.” (CEQA Guidelines, § 15151.) Lead agencies must make “a good faith effort at full disclosure” in the EIR and must “reasonably and in good faith discuss [] a project in detail sufficient to enable the public to discern from the EIR the ‘analytic route the . . . agency traveled from evidence to action.’” (*Id.*; *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 331 (hereafter *South of Market*)).

In determining whether a lead agency has met the disclosure requirements of CEQA, “[t]he ultimate inquiry . . . is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*South of Market, supra*, 33 Cal.App.5th 321, 330 [internal quotation marks omitted] [quoting *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516].) “The failure to provide enough information to permit informed decisionmaking is fatal. When the informational requirements of CEQA are not complied with, an agency has failed to proceed in a manner required by law and has therefore abused its discretion.” (*Napa Citizens, supra*, 91 Cal.App.4th 342, 361 [internal quotation marks and citations omitted].)

The SEIR does not meet CEQA’s disclosure requirements with respect to analysis of the Revised Project’s impacts. In particular, the SEIR utilizes an improper baseline, masking the significant environmental impacts resulting from the Revised Project. The SEIR also fails to adequately analyze and disclose the cumulative impacts that the Revised Project would have on the health of nearby disadvantaged communities. In addition, the SEIR does not identify or discuss inconsistencies with applicable regional air quality plans. Lastly, the SEIR fails to adequately discuss impacts that the Revised Project may have on biological resources. As a result of these deficiencies, the SEIR does not include adequate information to enable government decision makers and the public to understand and meaningfully consider the issues raised by the Revised Project, and therefore the SEIR violates CEQA’s disclosure requirements. (CEQA Guidelines § 15151; *South of Market, supra*, 33 Cal.App.5th 321, 330.)

#### **A. The SEIR Utilizes an Improper Baseline to Measure the Revised Project’s Environmental Impacts**

The SEIR fails to comply with CEQA by relying on an improper baseline to determine whether the Revised Project’s environmental impacts are significant. As the Port acknowledged, “[i]n the typical case, a supplemental EIR would adopt as its baseline the full build-out of the approved project as analyzed under the prior EIR and disclose the incremental change in environmental impacts between [the] revised project and the prior approved project, regardless of whether that project has been fully constructed.”<sup>64</sup> Under this approach, the baseline for the

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<sup>64</sup> 2018 RDSEIR at 2-27.

Revised Project should be the China Shipping Project as approved, assuming full implementation of all mitigation measures incorporated into the project under the 2008 EIR.

Pursuant to the 2008 EIR, implementation of the air quality mitigation measures incorporated into the China Shipping Project was to be phased in over time, making terminal operations progressively cleaner. However, for purposes of the SEIR, the Port utilized a baseline consisting only of actual 2008 conditions, which does not account for full implementation of all mitigation measures included in the 2008 EIR.<sup>65</sup> As discussed above, the SEIR removes, weakens, and/or delays implementation of six of these measures, resulting in excess emissions that will continue to increase as the China Shipping Container Terminal's throughput increases.<sup>66</sup> By utilizing the "Actual 2008" baseline, the SEIR fails to analyze the environmental impacts of the Revised Project as compared to the environmental impacts of the China Shipping Project.

"CEQA analysis [must] employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 449.) The China Shipping Project, as approved, is a realistic baseline. Indeed, the Port calculated the China Shipping Container Terminal's daily air pollutant emissions under the Revised Project and under the China Shipping Project for 2012, 2014, 2018, 2023, 2030, 2036, and 2046.<sup>67</sup> In doing so, the Port demonstrated its ability to determine the incremental change in air quality impacts between the Revised Project and the China Shipping Project as approved, which provides the most accurate picture possible of the Revised Project's potential impacts.

In sum, the SEIR's improper use of only an "Actual 2008" baseline fails to inform decision makers and the public of the increased air pollution and health risks that the Revised Project may cause as compared to the previously approved China Shipping Project, in violation of CEQA. (*South of Market, supra*, 33 Cal.App.5th 321, 331.) This is especially concerning given the known health hazards caused by elevated levels of air pollution and the already high pollution levels affecting communities near the Port.

#### **B. The SEIR Fails to Adequately Inform Decision Makers and the Public of the Revised Project's Health Impacts on Disadvantaged Communities**

Approval of the Revised Project raises important environmental justice concerns because emissions produced by the Revised Project will disproportionately affect disadvantaged communities that already face high pollution rates and excessive health risks. The 2008 EIR included an entire chapter dedicated to evaluating the environmental justice impacts of the China

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<sup>65</sup> *Id.* at 2-27 to 2-31; SEIR at 1-3.

<sup>66</sup> The Port projects that the Revised Project's throughput will increase until the terminal reaches its maximum cargo handling capacity of 1,698,504 twenty-foot equivalent units ("TEUs") in 2030. (2018 RDSEIR at 2-13.) In contrast, the 2008 EIR estimated that the maximum capacity of the China Shipping Container Terminal was 1,551,000 TEUs per year. (*Id.*) This represents an increase of roughly 9.5% (147,504 TEUs).

<sup>67</sup> 2018 RDSEIR at 3.1-60 to 3.1-61.

Shipping Project.<sup>68</sup> The chapter concluded that operation of the China Shipping Container Terminal would have disproportionately high and adverse individual and cumulative air quality impacts on nearby minority and low-income populations.<sup>69</sup> In contrast, the SEIR does not include any environmental justice analysis and concludes that “[e]nvironmental [j]ustice is not a CEQA issue.”<sup>70</sup> However, a lead agency should consider and discuss environmental justice concerns when evaluating a project under CEQA.<sup>71</sup> In the context of the SEIR, this discussion should describe the background pollution levels and existing public health risks experienced by communities near the China Shipping Container Terminal, identify any unique sensitivities of those communities to environmental hazards, and analyze the specific adverse health impacts that emissions from the Revised Project may have on those communities.

For purposes of analyzing a project’s adverse environmental impacts under CEQA, “[t]he significance of an activity depends upon the setting.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) Thus, “a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.” (CEQA Guidelines, § 15300.2, subd. (a).) Studies have shown increased sensitivity to pollution for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact.<sup>72</sup> A project’s environmental setting should therefore describe both the background environmental burdens faced by impacted communities and any unique sensitivities of those communities to pollution.

The residential neighborhoods near the China Shipping Container Terminal are considered “disadvantaged communities” in part because they are disproportionately affected by environmental pollution that can lead to negative health effects.<sup>73</sup> The environmental hazards facing these communities include emissions of ozone, PM<sub>2.5</sub>, and diesel PM, which is in exhaust

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<sup>68</sup> 2008 EIR at 3-1 [sections of the 2008 Recirculated Draft EIR that had no revisions, including the Environmental Justice chapter, were incorporated by reference into the final 2008 EIR]; *Recirculated Draft Environmental Impact Statement/Environmental Impact Report*, PORT OF LOS ANGELES, Chapter 5, Appen. G (hereafter 2008 DEIR).

<sup>69</sup> 2008 DEIR at 5-19.

<sup>70</sup> SEIR at 2-112.

<sup>71</sup> See *Environmental Justice at the Local and Regional Level*, ATTORNEY GENERAL OF CALIFORNIA (July 2012), [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf).

<sup>72</sup> *Cumulative Impacts: Building a Scientific Foundation*, OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT (Dec. 2010), Exec. Summary, p. ix, <https://oehha.ca.gov/media/downloads/calenviroscreen/report/cireport123110.pdf>.

<sup>73</sup> *CalEnviroScreen 3.0*, CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited Nov. 9, 2019). See also Health & Saf. Code, § 39711, subd. (a) [defining “disadvantaged community”].



produced by trucks, vessels, and cargo-handling equipment at the Port.<sup>74</sup> Long-term exposure to these pollutants has been linked to an increased risk of adverse health outcomes, including increased cancer risk, the development of asthma, chronic obstructive pulmonary disease, decreased lung function, and nonfatal heart attacks.<sup>75</sup> Indeed, a study conducted by South Coast Air Quality Management District (“SCAQMD”) in 2015 found that the area surrounding the Port had the highest estimated cancer risk in the South Coast Air Basin: 1,057 in a million, as compared to a basin-wide average risk of 367 in a million.<sup>76</sup> The SEIR should describe these existing environmental, health, and safety conditions facing the communities near the Revised Project in the environmental setting description.

Instead, the SEIR’s one-paragraph “Project Setting” description focuses on the industrial land uses in the area, including cargo handling operations, commercial fishing, power plant operations, and Port administration and maintenance.<sup>77</sup> Other than mentioning that the Revised Project is bounded by the community of San Pedro and that the land uses in the area include recreational and residential uses, the SEIR’s “Project Setting” ignores the fact that the Revised Project is located within close proximity to several residential communities in addition to San Pedro, including Wilmington, Carson, and West Long Beach.<sup>78</sup> The section also fails to acknowledge that many of those communities are already disproportionately affected by environmental pollution and experience elevated levels of negative health effects. Because the SEIR’s “Project Setting” section does not include relevant information pertaining to the environmental, health, and safety conditions facing the communities near the Revised Project, it fails to provide decision makers and the public with an accurate characterization of the Revised Project’s environmental setting.

The SEIR also fails to sufficiently explain the nature and magnitude of the Revised Project’s health impacts on nearby disadvantaged communities. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 523 (hereafter *Friant Ranch*) [emphasizing that “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is

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<sup>74</sup> *CalEnviroScreen 3.0*, CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited Nov. 9, 2019); 2018 RDSEIR at 3.1-10 [the South Coast Air Basin, which includes the Port and the surrounding area, fails to meet the National Ambient Air Quality Standards for ozone and fine particulate matter]; *Overview: Diesel Exhaust & Health*, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health> (last visited Dec. 18, 2019).

<sup>75</sup> 2016 AQMP at 2-4.

<sup>76</sup> *MATES IV*, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (May 2015) pp. 4-10 to 4-11, <http://www.aqmd.gov/docs/default-source/air-quality/air-toxic-studies/mates-iv/mates-iv-final-draft-report-4-1-15> [“The grid cell having the maximum simulated cancer risk of 1,057 in a million was located in the Ports of Los Angeles and Long Beach.”].

<sup>77</sup> 2018 RDSEIR at 2-8 to 2-9.

<sup>78</sup> *Id.*

significant, but some effort to explain the nature and magnitude of the impact”].) An EIR must discuss the health and safety problems that the proposed project may induce. (CEQA Guidelines, § 15126.2, subd. (a) [requiring an EIR to discuss the “health and safety problems caused by the physical changes” that the proposed project will induce].) More specifically, when it comes to air quality impacts, an EIR must allow the public to translate bare air pollutant data into adverse health impacts, or to understand why such translation is not possible. (*Friant Ranch*, *supra*, 6 Cal.5th 502, 525.)

The Port determined that the Revised Project would result in significant and unavoidable impacts to air quality and greenhouse gas emissions, including: operational emissions of carbon monoxide (“CO”), volatile organic compounds (“VOCs”), NO<sub>x</sub>, and greenhouse gases; offsite ambient air pollutant concentrations of nitrogen dioxide (“NO<sub>2</sub>”) and particulate matter 10 micrometers or less in diameter (“PM<sub>10</sub>”); and residential, occupational, and sensitive individual cancer risk.<sup>79</sup> The Port also determined that the Revised Project would make a cumulatively considerable and unavoidable contribution to existing significant impacts for: CO, NO<sub>x</sub>, VOC, and greenhouse gas emissions; offsite ambient air pollutant concentrations of NO<sub>x</sub> and PM<sub>10</sub>; and individual cancer risk.<sup>80</sup>

The SEIR estimates off-site ambient concentrations of various air pollutants resulting from the Revised Project and generally discusses the adverse health effects associated with exposure to those pollutants.<sup>81</sup> However, the SEIR does not indicate the concentrations at which the pollutants trigger the identified health symptoms, acknowledge the rates at which nearby communities are already experiencing the identified health symptoms, or analyze the specific health impacts that may result from emissions associated with the Revised Project. As such, the SEIR is inadequate under CEQA. (See *Friant Ranch*, *supra*, 6 Cal.5th 502, 523 [holding that an EIR’s discussion of air quality impacts was inadequate where it failed to indicate the concentrations at which pollutants emitted by the proposed project would trigger identified health effects, or to explain why such analysis was not possible].)

In sum, the SEIR fails to analyze the nature and magnitude of the Revised Project’s health impacts on nearby communities and to discuss environmental justice considerations. The inclusion of this information in the SEIR is necessary to enable the public to understand and meaningfully consider the issues raised by the Revised Project, and to enable decision makers to intelligently account for the Revised Project’s environmental consequences. (CEQA Guidelines, § 15151; *South of Market*, *supra*, 33 Cal.App.5th 321, 330.)

### **C. The SEIR Fails to Identify and Discuss Inconsistencies with Regional Air Quality Plans**

The SEIR must identify and discuss any inconsistencies between the Revised Project and applicable general, specific, and regional plans, including the applicable air quality attainment plan and plans for the reduction of greenhouse gas emissions. (CEQA Guidelines, § 15125,

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<sup>79</sup> SEIR at FOF-10.

<sup>80</sup> *Id.* at FOF-12.

<sup>81</sup> *Id.* at 3.1-9, 3.1-37 to 3.1-38.

subd. (d).) However, as discussed below, the SEIR fails to identify significant inconsistencies with SCAQMD's 2016 Air Quality Management Plan, the San Pedro Bay Ports Clean Air Action Plan 2017 Update, and the Wilmington/Carson/West Long Beach Community Emission Reduction Plan.

### 1. 2016 Air Quality Management Plan

The 2016 Air Quality Management Plan ("2016 AQMP") is a regional emission reduction strategy adopted by SCAQMD to bring the South Coast Air Basin into attainment with the National Ambient Air Quality Standards ("NAAQS").<sup>82</sup> According to SCAQMD, an additional 45 percent reduction in NO<sub>x</sub> emissions is needed by 2023, and an additional 55 percent reduction in NO<sub>x</sub> emissions is needed by 2041 to attain the 8-hour ozone NAAQS.<sup>83</sup> Achieving these reductions would also bring the region into attainment for PM<sub>2.5</sub>.<sup>84</sup> To reach these objectives, the 2016 AQMP relies on the use of near-zero and zero-emission technology at marine ports, which are large sources of air pollution.<sup>85</sup>

Mitigation Measure AQ-20, which required the implementation of liquid natural gas drayage trucks under the 2008 EIR, was designed to reduce air emissions produced by the China Shipping Project.<sup>86</sup> However, AQ-20 is not included in the Revised Project and has not been replaced with an alternate measure.<sup>87</sup> Moreover, the other air quality mitigation measures that were included in the 2008 EIR, but not fully implemented, including measures to expedite the utilization of near-zero and zero-emission equipment at the China Shipping Container Terminal, have been weakened and tied to protracted or uncertain implementation schedules.<sup>88</sup> As acknowledged in the SEIR, the Revised Project will result in NO<sub>x</sub> emissions that vastly exceed the SCAQMD significance threshold, hindering the 2016 AQMP's objectives of significantly reducing NO<sub>x</sub> emissions and bringing the region into attainment with the NAAQS.<sup>89</sup> The SEIR's failure to discuss this inconsistency between the Revised Project and the 2016 AQMP falls short of what CEQA requires.

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<sup>82</sup> 2016 AQMP at ES-1; SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *Letter to California Air Resources Board Concerning Submittal of the 2016 Air Quality Management Plan* (Mar. 10, 2017), <https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/sipsubmittal.pdf?sfvrsn=6>.

<sup>83</sup> 2016 AQMP at 4-2.

<sup>84</sup> *Id.* at 5-20.

<sup>85</sup> *Id.* at 4-28, 4-37 to 4-40.

<sup>86</sup> 2008 EIR at FOF-65.

<sup>87</sup> SEIR at FOF-7 to FOF-8.

<sup>88</sup> SEIR at FOF-3 to FOF-9.

<sup>89</sup> *Id.* at FOF-10.

## 2. Clean Air Action Plan 2017 Update

The Clean Air Action Plan 2017 Update (“CAAP 2017 Update”) was adopted by the Port of Los Angeles and the Port of Long Beach as a strategy to reduce emissions of air pollutants caused by cargo movement in and around the Ports.<sup>90</sup> The CAAP 2017 Update sets forth the following air quality objectives: reduce port-related emissions by 59% for NO<sub>x</sub>, 93% for sulfur oxides (“SO<sub>x</sub>”), and 77% for diesel PM by 2023; reduce residential cancer risk from port-related diesel PM emissions by 85% as compared to 2005 conditions by 2020; and reduce greenhouse gas emissions from port-related sources by 40% as compared to 1990 levels by 2030, and by 80% by 2050.<sup>91</sup> The CAAP 2017 Update strives to achieve these objectives, in part, through 100% compliance with the California Air Resources Board’s (“CARB”) At-Berth Regulation by 2030, the utilization of 100% zero-emission cargo-handling equipment by 2030, and the utilization of 100% zero-emissions trucks by 2035.<sup>92</sup>

In addition to imposing stringent emissions standards for cargo-handling equipment operated at the China Shipping Container Terminal, the 2008 EIR’s air quality mitigation measures required 100% utilization of alternative maritime, 100% compliance with the expanded Vessel Speed Reduction Program, and the use of 100% liquid natural gas drayage trucks.<sup>93</sup> However, these measures are either absent or weakened in the SEIR, resulting in an increase in total NO<sub>x</sub>, SO<sub>x</sub>, and particulate matter emissions as compared to the full implementation of all mitigation measures adopted under the 2008 EIR.<sup>94</sup> Thus, the Revised Project conflicts with the goals set forth in the CAAP Update 2017. Yet, the SEIR fails to identify or discuss any inconsistencies between the Revised Project and the CAAP 2017 Update, and is, for that reason, deficient under CEQA.

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<sup>90</sup> 2017 Clean Air Action Plan Fact Sheet, SAN PEDRO BAY PORTS (Nov. 2017) at 1, <https://cleanairactionplan.org/documents/2017-clean-air-action-plan-update-fact-sheet-10-23-17.pdf>.

<sup>91</sup> CAAP 2017 Update at 25-26.

<sup>92</sup> CAAP 2017 Update at 45, 51, 61. The At-Berth Regulation requires vessel fleet operators visiting the Port to reduce at-berth emissions from auxiliary engines by: 1) turning off auxiliary engines and utilizing alternative maritime power; or 2) using alternative control technology that achieves equivalent emission reductions. (*Shore Power for Ocean-going Vessels*, CALIFORNIA AIR RESOURCES BOARD, <https://ww3.arb.ca.gov/ports/shorepower/shorepower.htm> (last visited Feb. 14, 2020).)

<sup>93</sup> 2008 EIR at FOF-62 to FOF-65. These mitigation measures include AQ-9, AQ-10, AQ-15, AQ-16, AQ-17, and AQ-20.

<sup>94</sup> SEIR at 1-14, 1-18 to 1-19, FOF-4; 2018 RDSEIR at 3.1-60 to 3.1-61 [showing an overall increase in NO<sub>x</sub>, SO<sub>x</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub> emissions between 2012 and 2045 under the Revised Project, as compared to full implementation of the mitigation measures adopted in the China Shipping Project].

### 3. Wilmington/West Long Beach/Carson Community Emission Reduction Program

Assembly Bill 617 (“AB 617”) requires CARB to select disadvantaged communities affected by high exposure burdens for toxic air contaminants and criteria air pollutants for inclusion in the AB 617 program. (Health & Saf. Code, § 44391.2, subd. (b)(1).) The local air quality management district whose jurisdiction encompasses each community is required to prepare, in consultation with CARB and a community steering committee, and adopt a Community Emission Reduction Plan (“CERP”) designed to “result in emissions reductions in the community.” (Health & Saf. Code, § 44391.2, subds. (c)(1), (c)(5).) CARB selected the disadvantaged community consisting of Wilmington, West Long Beach, and Carson for inclusion in the AB 617 program. SCAQMD prepared a CERP for this disadvantaged community, which is located in close proximity to the Port.<sup>95</sup>

The Wilmington/West Long Beach/Carson CERP sets forth emission reduction targets for NOx, VOCs, SOx, and diesel PM, and identifies marine ports and the drayage trucks, ships, and various types of cargo-handling equipment utilized at the ports as main sources of air pollution emissions in the area.<sup>96</sup> The CERP recommends several actions be taken in order to meet its emission reduction goals, including the development of more stringent rules and regulations and the implementation of incentive programs at the Port.<sup>97</sup> However, in the SEIR, the Port removed one and weakened five of the approved 2008 EIR mitigation measures aimed at reducing air pollutant emissions from the China Shipping Container Terminal. Because the Revised Project impairs SCAQMD’s ability to attain the CERP’s objectives, the SEIR is inconsistent with the CERP. (*Ideal Boat & Camper Storage v. County of Alameda* (2012) 208 Cal.App.4th 301, 311.) Yet, the SEIR asserts incorrectly and without explanation that AB 617 “concern[s] regulation of greenhouse gases at the statewide level and thus do[es] not apply directly to the Revised Project.”<sup>98</sup> Not only does the SEIR fail to identify any inconsistency with the CERP, it fails to even mention the CERP.

Because the SEIR does not identify and discuss inconsistencies between the Revised Project and applicable plans to improve regional and basin-wide air quality, the SEIR violates CEQA.

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<sup>95</sup> *Community Air Protection Program: 2018 Community Recommendations Staff Report*, CALIFORNIA AIR RESOURCES BOARD (Sep. 11, 2018) at 5, 29-30, [https://ww2.arb.ca.gov/sites/default/files/2018-09/2018\\_community\\_recommendations\\_staff\\_report\\_revised\\_september\\_11.pdf](https://ww2.arb.ca.gov/sites/default/files/2018-09/2018_community_recommendations_staff_report_revised_september_11.pdf).

<sup>96</sup> CERP at 3a-8, 3b-29 to 3b-30, 5a-1 to 5a-3.

<sup>97</sup> CERP at 5c-6 to 5c-9.

<sup>98</sup> SEIR at 2-50.

**D. The SEIR Does Not Adequately Discuss Impacts that the Revised Project May Have on Biological Resources**

The 2008 EIR contained two identical mitigation measures, AQ-10 and BIO-2. Each required all ships calling at the China Shipping Container Terminal to comply with the expanded Vessel Speed Reduction Program.<sup>99</sup> Mitigation Measure AQ-10 has been revised in the SEIR to require only 95% compliance with the expanded Vessel Speed Reduction Program for ships calling at the China Shipping Container Terminal.<sup>100</sup> However, the SEIR is silent as to whether Mitigation Measure BIO-2 has been left unaltered, deleted, or revised in the same manner as Mitigation Measure AQ-10.

Mitigation Measure BIO-2 was adopted as part of the China Shipping Project in order to mitigate the project's potential impacts on biological resources, including whales and other marine mammals.<sup>101</sup> The 2008 EIR explained that “[a]lthough the likelihood of a collision between a vessel and marine mammals is very low, [Mitigation Measure] BIO-2 would further reduce potential impacts.”<sup>102</sup> The 2008 EIR further stated that “[w]ith implementation of [Mitigation Measure] BIO-2, residual impacts as a result of [the China Shipping Project's] operational activities would be less than significant.”<sup>103</sup>

The SEIR's only discussion of Mitigation Measure BIO-2 appears in the Screening Analysis and in the Findings of Fact and Statement of Overriding Considerations. The Screening Analysis concludes that “[n]one of the revised mitigation measures [included in the SEIR] affects biological resources” and therefore, biological resources “need not be considered in the SEIR.”<sup>104</sup> The SEIR's Findings of Fact and Statement of Overriding Considerations similarly lists biological resources as an impact area that is not addressed in the SEIR because it would not be affected by changes made to the Revised Project.<sup>105</sup> As a result of this scant discussion, the fate of Mitigation Measure BIO-2 under the SEIR is unclear.

If Mitigation Measure BIO-2 has been left unaltered under the SEIR, the SEIR is internally contradictory. The SEIR concludes that 100% compliance with the expanded Vessel Speed Reduction Program is infeasible with regard to Mitigation Measure AQ-10.<sup>106</sup> Yet, Mitigation Measure BIO-2, as adopted under the 2008 EIR, imposed an identical requirement. As such, if Mitigation Measure BIO-2 has been left unaltered under the SEIR, the SEIR purports to impose a requirement that it has deemed infeasible.

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<sup>99</sup> 2008 EIR at FOF-41, FOF-63.

<sup>100</sup> SEIR at FOF-4.

<sup>101</sup> 2008 EIR at FOF-41.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> 2018 RDSEIR at D1-3.

<sup>105</sup> SEIR at FOF-9.

<sup>106</sup> SEIR at FOF-4.

Alternatively, if the Port has deleted Mitigation Measure BIO-2, it has done so without stating a legitimate reason for deleting the measure and supporting that reason with substantial evidence, as required under *Napa Citizens*. (See *Napa Citizens, supra*, 91 Cal.App.4th 342, 359 [a lead agency “must state a legitimate reason for deleting [a previously adopted] mitigation measure, and must support that statement of reason with substantial evidence”].)

Assuming that the Port intended to revise Mitigation Measure BIO-2 in the same manner as Mitigation Measures AQ-10, the Port has failed to provide sufficient information for decision makers and the public to evaluate whether and to what extent the revision to BIO-2 will impact biological resources, including whales and other marine mammals. The SEIR’s Findings of Fact and Statement of Overriding Considerations states that changes made to the Revised Project, including the weakening of Mitigation Measure AQ-10 (and presumably Mitigation Measure BIO-2), could not and would not affect biological resources.<sup>107</sup> However, to the contrary, the SEIR also states that “[t]he 2008 EIS/EIR concluded that the [China Shipping Project] would have potential significant impacts on biological resources related to . . . marine mammals,” and acknowledges that Mitigation Measure BIO-2 was adopted to mitigate impacts to marine mammals.<sup>108</sup> This internal inconsistency with regard to the China Shipping Container Terminal’s potential impacts on biological resources and the necessity of Mitigation Measure BIO-2 falls short of the transparency required under CEQA.

In addition, the Port does not provide support for its finding that “[n]one of the revised mitigation measures [included in the SEIR] affects biological resources.”<sup>109</sup> This finding appears to be based on an anticipated reduction in the number of ships calling at the China Shipping Container Terminal under the Revised Project.<sup>110</sup> However, the SEIR fails to consider evidence that the Revised Project will have potentially significant impacts on marine mammals, especially whales, even if there is a reduction in ship calls. Ship traffic is only one of several factors that affect the likelihood that a vessel will strike a whale or other marine mammal. Vessel speed also affects the likelihood and severity of vessel strikes and, due to the weakening of Mitigation Measure AQ-10 (and presumably Mitigation Measure BIO-2), a number of the ships calling at the China Shipping Container Terminal will be traveling at speeds exceeding 12 knots.

Studies completed since 2008 suggest that container ships traveling at speeds greater than the Vessel Speed Reduction Program speed limit of 12 knots are much more likely to strike and

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<sup>107</sup> *Id.* at FOF-9.

<sup>108</sup> 2018 RDSEIR at D1-3.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* [“Vessels calling at the [China Shipping] Container Terminal would continue to be subject to the [expanded Vessel Speed Reduction Program], and because vessel traffic would decrease compared to the Approved Project (from 234 to 156 per year), impacts [to biological resources] would be further reduced, even though the compliance rate is assumed to be slightly lower (95% versus 100%).”].

kill whales than ships traveling at 12-knots or slower.<sup>111</sup> Studies have further shown that the death of any individual member of the multiple endangered whale species known to inhabit the waters outside of the Port may jeopardize the continued survival and recovery of those species.<sup>112</sup> In light of these studies, the potential impacts on biological resources from the Revised Project's weakening of Mitigation Measure BIO-2 should have been evaluated and addressed in the SEIR in order to support the Port's finding that the Revised Project will not have any potential significant impacts to biological resources.<sup>113</sup> By failing to identify the facts and inferences on which this conclusion is based, the SEIR prevents decision makers and the public from understanding and meaningfully considering the Revised Project's potential impacts. As such, the SEIR precludes informed decision making and public comment, and thus violates CEQA. (*South of Market, supra*, 33 Cal.App.5th 321, 330-331; Pub. Resources Code, § 21005, subd. (a).)

### CONCLUSION

The Board's certification of the SEIR and approval of the Revised Project violate the requirements of CEQA, undermine CEQA's primary purposes, and fail to protect nearby communities from harmful air pollution resulting from the China Shipping Container Terminal's operations. For the foregoing reasons, we respectfully urge you to reject the Board's certification of the SEIR and approval of the Revised Project and insist that the Port comply with CEQA's requirements prior to issuing approvals for the China Shipping Container Terminal. In the meantime, the Port must ensure that the China Shipping Project operates as approved under the 2008 EIR, including full implementation of all mitigation measures contained therein.

Please feel free to contact us with any questions that may arise as you consider this matter.

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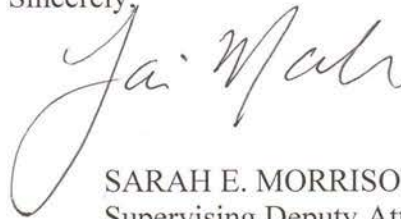
<sup>111</sup> See, e.g., Rockwood RC, et al., *High Mortality of Blue, Humpback and Fin Whales from Modeling of Vessel Collisions on the U.S. West Coast Suggests Population Impacts and Insufficient Protection* (Aug. 2017) PLoS ONE 12(8): e0183052, <https://doi.org/10.1371/journal.pone.0183052>; NOAA, *Draft Recovery Plan for Blue Whale Revision* (Oct. 2018) at 32, <https://www.fisheries.noaa.gov/webdam/download/82274557>; Carretta, et al., *U.S. Pacific Marine Mammal Stock Assessments: 2017* (June 2018) at 49, [https://repository.library.noaa.gov/view/noaa/18080/noaa\\_18080\\_DS1.pdf](https://repository.library.noaa.gov/view/noaa/18080/noaa_18080_DS1.pdf).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at D1-3.



Sincerely,



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