



San Pedro Peninsula Homeowners United, Inc.



Urban & Environmental  
Policy Institute  
OCCIDENTAL COLLEGE



SAN PEDRO PENINSULA  
HOMEOWNERS' COALITION

City of Los Angeles Harbor Department  
Christopher Cannon, Director  
Environmental Management Division  
P.O. Box 151  
San Pedro, CA 90731  
ceqacomment@portla.org  
*Via Email and U.S. Mail*

October 3, 2019

Re: Final Supplemental Environmental Impact Report – Berths 97-109 [China Shipping]  
Container Terminal Project

Dear Mr. Cannon,

On behalf of the Natural Resources Defense Council, San Pedro and Peninsula Homeowners' Coalition, San Pedro Peninsula Homeowners United, Inc., Coalition for Clean Air, Urban and Environmental Policy Institute, Occidental College, Long Beach Alliance for Children with Asthma, and East Yard Communities for Environmental Justice, we provide comments on the Final Supplemental Environmental Impact Report for Berths 97-109, China Shipping Container Terminal (Final SEIR).<sup>1</sup> On November 16, 2018, we submitted comments on the Recirculated Draft Supplemental EIR, and we refer to and incorporate those comments where necessary.

In short, the Final SEIR violates CEQA's command to inform the public and decision makers about the environmental harms of the project. The Port's air quality analysis continues to obscure both the past excess emissions from the Port's violation of the 2008 EIR mitigation measures and the future excess emissions from the proposed Revised Project. Furthermore, the Port has improperly rejected feasible mitigation measures, including new zero-emission technologies that have become available since the 2008 EIR was prepared.

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<sup>1</sup> All signatories to this letter who were parties or members of parties involved in *NRDC et al. v. City of Los Angeles et al.*, No. BS 070017 (Cal. Sup. Ct. June 14, 2004) reserve all rights with respect to breaches of the Amended Stipulated Judgment (the ASJ) associated with that case.

As to mitigation, the Port takes a novel approach to compliance with CEQA: setting the bar so low that it is practically impossible to fail. Every modification to existing mitigation measures is characterized by brazen entrenchment with the status quo and, in some cases, outright reversionism. We do not seek that which is “impossible to attain,” as the Port suggests. *See* Final SEIR at 2-79. But we do demand adherence to CEQA’s requirements to mitigate significant impacts, and we expect transparency and a modicum of operational competency from the Port.

The Final SEIR fails not only as a matter of law; the Port’s elimination of essential mitigation measures previously deemed feasible, and its failure to consider more stringent mitigation measures currently available and feasible, is an affront to the communities of the South Coast Air Basin, who will continue to pay for the Port’s post-hoc rationalization efforts with their health.

Notably, the Port continues to turn substantial profits while failing to implement the mitigation measures required by the 2008 EIR and Amended Stipulated Judgment. While the Port now claims that many of the mitigation measures it previously agreed to are infeasible, largely for economic reasons, the reality is that the Port continues to make millions of dollars each year. In the most recent fiscal year, the Port has made over \$234 million in profits. If that profit is adjusted proportionally for the amount of throughput at the China Shipping terminal, that would be nearly \$40 million attributable to the terminal alone. Ex. L1, *Estimated Port of Los Angeles Profits from Operating China Shipping Terminal While Failing to Fulfill Environmental Mitigation Commitments*; *see also* Exs. D11, D16, D20, Port financial statements. The Port should not continue to profit in the tens of millions of dollars while simultaneously failing to implement mitigation measures that would protect the health of nearby communities.

The goal of this Final SEIR is simple: to sweep under the rug over a decade of the Port’s failure to comply with the law. Fortunately for the affected communities, this will hardly be the case. By seeking certification of this Final SEIR, the Port is rolling out the carpet for economic losses to the tune of millions of dollars. *See* Ex. B1, ASJ at XI (requiring the Port to pay a penalty of \$30 per TEU in excess of the annual limit of 328,000 TEUs during the course of any action “challenging the adequacy of the China Shipping EIR or otherwise challenging the legality of the City’s or the Port’s decisions regarding the use of Berths 97-109”); Ex. L2 (calculating the Port’s economic benefit for monies held for unfinished community aesthetic projects).

Given that China Shipping has no interest in complying with the mitigation measures in the 2008 EIR, we recommend that the Board reject the Revised Project, and terminate the lease with China Shipping and find a tenant that can partner with the City in fulfilling its zero emission goals. Alternatively, the China Shipping Terminal should be shut down until such time that it comes into compliance with CEQA. Absent that, it is difficult to see how the Port will comply with CEQA or meet its project objectives to grow the terminal sustainably.

#### **I. The Port’s analysis of air quality impacts is misleading**

The Final SEIR admits that the Revised Project would have significant impacts, and that the past violations of the 2008 EIR also had significant impacts. That alone is enough to trigger the

requirement to implement all feasible mitigation. *See* Section II, *infra*. Nonetheless, the Port still has a duty to accurately disclose and analyze the air quality impacts of the project.

There are two critical components of this analysis: First, the Port must disclose and mitigate the *past* excess emissions that were caused by its failure to comply with the 2008 EIR mitigation measures. Second, it must analyze and mitigate the *future* excess emissions that will be caused by the Revised Project as compared to what is required under the approved project.<sup>2</sup> The Port's continued refusal to provide this analysis violates CEQA and leaves the public and decision makers in the dark about the project's true impacts.

#### **A. The Port fails to properly analyze past excess emissions**

The Port must disclose and analyze the past excess emissions that were caused by its violation of the 2008 EIR and Amended Stipulated Judgment; that analysis requires a comparison of actual past project emissions to what emissions would have been if all mitigation in the 2008 EIR had been implemented.

The Port's primary defense to failing to provide this analysis is a non sequitur. It claims that it need not analyze these emissions because this is a supplemental EIR prepared after the 2008 EIR, which is "conclusively presumed valid as a matter of law." Final SEIR 2-71. But the question is not whether the 2008 EIR is presumed valid as a matter of law. Even if the 2008 EIR is presumed valid as a matter of law, the problem is that the Port *violated* the mitigation measures required in that EIR, and now seeks to sanction many of those violations via this supplemental EIR.

The Port also claims that it actually provided this comparison, but that is incorrect for three reasons. First, the argument that the Port provided this information in the Recirculated Draft SEIR is a half-truth, at best. The Port states that the "subtraction of total yearly emissions from tables B1-69 and B1-661, for the Revised Project and the FEIR Mitigated Scenario, respectively, represents the comparative emissions on an annual basis." Final SEIR at 2-24. But readers shouldn't have to compare charts, some of which are in technical appendices, across pages and do arithmetic to find the answer to one of the most critical questions at issue. That information should be presented in a clear manner in the EIR. An EIR's analysis must be "straightforward and intelligible [and] requiring the reader to painstakingly ferret out the information from the

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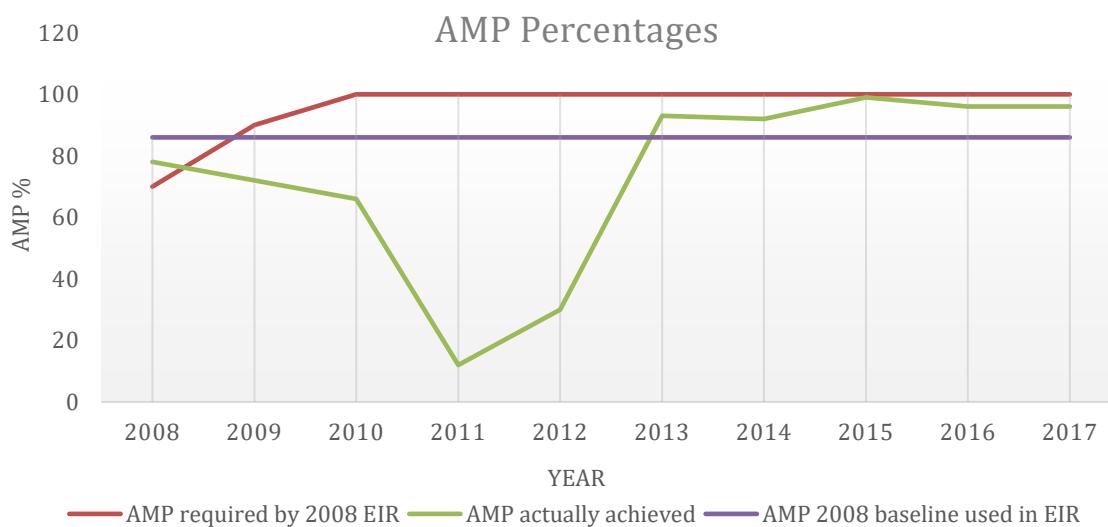
<sup>2</sup> The Port complains that the term "excess emissions" is not "employed or defined in the CEQA statute or guidelines." Final SEIR at 2-69; *see also* 2-71 (referring to the term as a "non-CEQA" term). But there is no requirement that commenters use only terms defined in the CEQA statute or guidelines. Indeed, such a requirement is at odds with CEQA's focus on commonsense analysis of environmental impacts. *See Communities for a Better Env't v. City of Richmond*, 184 Cal. App. 4th 70, 88 (2010) (stating that the fundamental goal of an EIR is to inform decision makers and the public about the environmental consequences of a project). If anything, CEQA favors a plain language over legal jargon. In any case, the Port clearly understood what the term "excess emissions" means. *See* Final SEIR at 2-70 (repeating definitions of "past excess emissions" and "future excess emissions").

reports is not enough.” *Planning & Conservation League v. Dep’t of Water Res.*, 83 Cal. App. 4th 892, 911 (2000), *as modified on denial of reh’g* (Oct. 16, 2000).

Second, even though the Final SEIR presents a new chart purporting to display this information in one place, the numbers in that new chart do not match the numbers in the Recirculated Draft SEIR, even after converting tons/year to pounds/day. Compare Table MR 5-1 on page 2-25 of the Final SEIR with Table 3.1-11 on page 3.1-60 of the Draft RSEIR. There is no explanation for the inconsistency.

Third, none of the charts in the Recirculated Draft SEIR and Final SEIR evaluates emissions for all years, and thus they provide an incomplete picture of the total past excess emissions. Data are missing for 2008, 2009, 2011, 2013, 2015, 2016, and 2017. Critically, in all of those years—but especially 2011—the Port was in violation of the Alternative Maritime Power (AMP) requirements—with major pollution effects. The Port claims it does not need to evaluate the pollution from each year, but that is not true in this circumstance; here, the Port already has the data to determine the excess past emissions from each year, and must do so in order to adequately mitigate for those past excess emissions. Indeed, the Port itself states that interpolation between years does not appropriately consider variations in year-to-year fluctuations. Final SEIR at 2-99.

The chart below illustrates one example of why an accurate disclosure of past emissions matters. It shows how the Port’s use of a baseline of 2008 conditions for the AMP requirement obscures the true level of excess emissions caused by the Port’s violation of that measure: In 2008, the compliance rate with the AMP measure was 86%. Recirculated Draft SEIR at 2-3. But for most years, the AMP compliance rate required by the 2008 EIR was 100%. Thus, by using 86% as the baseline, the Port’s analysis inaccurately minimizes—or, after 2013, totally erases—the pollution impact for many years.



This is just one example, for one mitigation measure. The same problem exists for the other mitigation measures as well. The Port must provide a full accounting of the past emissions, from violations of *all* measures, including yard equipment measures. And it must provide compensatory mitigation to offset the significant emissions that resulted from those breaches, many of which are still occurring.

**B. The Port fails to properly analyze past future excess emissions**

**i. The Port uses the wrong baseline for future excess emissions**

The Port must also analyze and disclose future excess emissions from the Revised Project compared to what is currently required under the 2008 EIR for the approved project. As with the past excess emissions, using a static baseline of 2008 for future excess emissions obscures the true impact of the Revised Project.

Under the 2008 EIR, there were a number of yard equipment mitigation measures that were scheduled to be phased in *after* 2008: for example, the 2008 EIR set 2012 and 2014 deadlines for increasingly clean yard equipment. Similarly, the measure phasing in LNG trucks started at 50% in 2012, gradually rising to 100% in 2018. Recirculated Draft SEIR at 2-5. Each of these measures would reduce air pollution, and thus incorporating them into the baseline would make the baseline correspondingly more stringent. Therefore, the Port should have used the baseline of what was required under the 2008 EIR rather than static 2008 conditions.

None of the Port's excuses for its baseline choice pass muster. The Port claims, with no citation, that "[t]here is no requirement under CEQA for a supplemental EIR, evaluating the impacts of a proposed change to an already approved project, to determine the significance of the impacts of the proposed change by comparison to such a CEQA baseline that fluctuates over time." Final SEIR at 2-70. But that is *exactly* what CEQA requires. *See, e.g., Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.*, 1 Cal. 5th 937, 959 (2016) (stating that an EIR must be prepared for "changes to a project" that "might have a significant environmental impact not previously considered in connection with the project as originally approved"). The entire point of this exercise is to understand how much worse the Revised Project would be compared to the approved project—how else can the Port do that except by comparing the Revised Project *to the approved project*?

The fact that the baseline for the approved project changes over time, as mitigation measures were supposed to be implemented, makes no difference. The Port's protestations that it cannot use a "baseline that fluctuates over time" is patently false in light of the Port's willingness to do just that for the Health Risk Assessment, where it uses (a different) "floating" baseline. It is entirely unclear why the Port is using a floating baseline of pollution control measures that are required to be phased in by law, but won't use a floating baseline of pollution control measures that are required to be phased in by the 2008 EIR.

**ii. The Port's assumption that the lease with China Shipping will be amended causes it to understate future impacts from the Revised Project**

The Port's analysis of future excess emissions is deficient in yet another way. Throughout the EIR, the Port assumes that the mitigation measures for the Revised Project will be implemented starting in 2019. Final SEIR at 2-66. Yet the Port fully admits that it is impossible to know when—and whether—it will sign a new lease with China Shipping. *Id.* In fact, the record is replete with evidence that China Shipping will not agree to a lease amendment, as it has refused to do so in the past.

The Port responds that the preparation of the EIR is not the “appropriate forum” for determining the consequences of prior conduct of the Port and China Shipping. Final SEIR at 2-29. But the question in this case is not about the prior conduct of China Shipping, but rather how that conduct indicates China Shipping will act in the *future*. The Port has provided no evidence whatsoever that China Shipping will agree to modify its lease this time around. Assuming so is, at best, irresponsible and misleading.

Nonetheless, in its analysis, the Port inexplicably takes full credit for the emissions reductions that may never happen, and that certainly will not happen starting in 2019. This has the effect of drastically understating the true pollution impacts of the Revised Project. A more honest analysis would assume that none of the new mitigation measures for the Revised Project that depend on lease amendment would be implemented.

While the Revised Project as analyzed has significant environmental impacts, those impacts would be even greater and more widespread if the Port did not assume lease amendment. The Port should disclose the pollution impacts of the Revised Project assuming no lease amendment, which is the most likely scenario. And the Port must also, as described below, develop truly feasible mitigation measures to offset that additional pollution.

In any case, because even the Port's own flawed analysis shows that the Revised Project would have multiple significant air quality impacts, it must implement all feasible mitigation for those impacts. As described in our prior comments and below, the Port fails to do so.

**II. The Final SEIR fails to overcome the presumption that the 2008 mitigation measures are feasible, and fails to set forth all feasible measures to reduce significant operational emissions**

The Port's attempts to justify the elimination or modification of seven air quality measures adopted in the 2008 EIR to mitigate operational emissions remain legally insufficient. While an agency may delete or modify a mitigation measure adopted in an initial EIR, it cannot do so “without a showing that it is infeasible.” *Napa Citizens for Honest Gov't v. Napa Cty. Bd. of Supervisors*, 91 Cal. App. 4th 342, 359 (2001). Now in its third iteration, the Final SEIR continues to fail to state legitimate reasons, supported by substantial evidence, for deleting or modifying these mitigation measures. *See id.*

Eleven years after the certification of the 2008 EIR, the Port contends that many of the

mitigation measures then adopted are now infeasible due to technological, operational, or economic reasons. *See* Final SEIR at 1-12 to 1-20. Yet, even after the Port had multiple chances to supplement the record, the Final SEIR fails to provide enough information to corroborate these claims, let alone the “substantial evidence” required by law. Ample evidence on the record demonstrates that not only are these measures feasible, but that new, more protective mitigation measures are now available. The Final SEIR fails to overcome the presumption that the 2008 EIR’s mitigation measures remain feasible.

**A. The 2008 AMP measure (MM AQ-9) is feasible**

Without any support, the Final SEIR points to several factors allegedly preventing the terminal from achieving compliance with the 2008 EIR’s requirement of having 100% of OGVs calling in to China Shipping connecting to shore power. *See* Final SEIR at 1-12 (mentioning that some third-party and small vessels may not be equipped with AMP technology). In its anemic discussion, the Final SEIR makes no attempt to describe the vessel mix calling in to the CS terminal—information necessary to determine China Shipping’s ability to comply with AMP requirements. Further, if these factors are as ubiquitous in the realm of international shipping as the Final SEIR suggests, then the Port would have considered this information when determining that the 2008 EIR’s AMP mitigation measure was feasible at the time of its adoption. Nowhere in the Final SEIR does the Port attempt to explain whether and how these factors have changed so drastically as to render the existing AMP mitigation measure infeasible.

The Final SEIR exceedingly and unnecessarily weakens the existing AMP requirements by both reducing the AMP compliance requirement from 100% to 95% *and* carving out four exceptions to this requirement based on circumstances or conditions that do not permit a vessel to plug into shore power. *See* Final SEIR at 1-12 to 1-13. According to the Final SEIR, “[i]n the event one of these circumstances or conditions exist, an alternative at-berth emission control capture system shall be deployed.” Final SEIR at 1-13. But if the existence of these “exceptional” circumstances or events is what allegedly prevents the CS terminal from achieving 100% AMP compliance, then the Port need only add these exceptions. It does not *also* need to reduce the compliance requirement to 95%. Further, the Final SEIR provides no justification for proposing a compliance requirement of 95% when the CS terminal has demonstrated that it is feasible to achieve up to 99% AMP in the past. Final SEIR Table 1-1. Requiring any less than this falls short of the Port’s CEQA obligation to adopt all feasible mitigation measures

The Port suggests that 100% compliance through either AMP or alternative at-berth emissions control, an approach which we suggested in our November 16, 2018 comment letter, is precisely what the *intent* of Final SEIR MM AQ-19 requires. Final SEIR at 2-77 to 2-78. This is simply not so. As modified by the Final SEIR, MM AQ-19 carves exceptions to the exception, requiring alternative at-berth emission control capture only “if feasible, based on availability, scheduling, operational feasibility, and contracting requirements between the provider of the equivalent alternative technology and the terminal operator.” Final SEIR at 1-13. It strains credulity to suggest that the number one container port in the United States in terms of volume, and one of the world’s busiest seaports, lacks the logistical foresight to ensure that alternative at-berth emission control measures are available in every instance where a vessel is unable to use AMP.

None of the reasons cited in the Final SEIR overcome the presumption that a 100% compliance rate with AMP is feasible. The Port should maintain the 100% AMP compliance requirement, requiring alternative at-berth emissions mitigation in all other cases where exceptional circumstances or conditions prevent a vessel from using AMP while hoteling in the Port.

**B. The 2008 VSR measure (MM AQ-10) is feasible**

Without presenting any data, the Final SEIR asserts that vessels cannot achieve a 100% compliance rate because of pressure on vessel schedules caused by weather, port delays, and mechanical problems, and the need to maintain economic competitiveness. Final SEIR at 1-13. But the Final SEIR neither describes how this information was not at its disposal when it determined that the 2008 EIR VSRP measure was feasible, nor how the facts have changed so significantly as to render this requirement infeasible eleven years after its adoption.

Further, the Final SEIR seeks to reduce the compliance rate to 95% when vessels calling the CS terminal have proven it feasible to achieve at least 98% compliance. Final SEIR Table 1-1. The Port makes no effort to explore methods to increase compliance with the VSRP requirement, such as eliminating its compliance incentive program and, for once, enforcing the vessel speed requirement. Instead, just as it does with MM AQ-9, the Final SEIR lowers the bar so as to ensure compliance through inaction, without making any effort to further mitigate impacts on air quality.

The Final SEIR goes on to suggest that “the actual effect on air quality and public health of requiring 95% rather than 100% would be negligible.” Final SEIR at 1-14. Failing to provide any analysis of the excess emissions that would result from VSRP compliance reductions and determining their cumulative environmental and human health impacts,<sup>3</sup> this conclusion is unwarranted and negligent.<sup>4</sup>

Generalized assertions are simply insufficient to show that the existing mitigation measure is infeasible. The Final SEIR fails to overcome the presumption that requiring 100% of OGVs calling the CS terminal to comply with the VSRP within a 40 nm radius of Point Fermin is feasible.

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<sup>3</sup> The Port suggests that the Recirculated Draft SEIR discusses how “the effects on public health and air quality of a non-compliance rate of 5% are negligible.” Final SEIR at 2-79. But the RDSEIR’s “discussion” is nothing but the same conclusory statements, lacking any data or analysis, that the Port attempts to pass as gospel in the Final SEIR.

<sup>4</sup> Emissions from OGVs are anything but negligible. *See, e.g.*, Ex. E19 – 2018 Air Emissions Inventory, at 23.

**C. The cargo handling equipment measures (MM AQ-15, AQ-16, AQ-17) are feasible, and can be strengthened to require utilizing zero emission technologies and faster phase-in schedules**

The writing on the wall is clear: The Port must begin working immediately toward replacing its cargo handling equipment with zero emission equipment.<sup>5</sup> The Mayors of Los Angeles and Long Beach so indicated in their June 2017 executive directives, setting a goal that the ports fully transition to zero emission cargo handling equipment by 2030. In March 2017, CARB adopted a resolution directing its staff to develop cargo handling equipment regulations to achieve up to 100% zero emissions by 2030.<sup>6</sup> In seeking to weaken the 2008 EIR's mitigation measures for cargo handling equipment without a legally defensible basis, the Port digs its heels in. Fortunately for the millions who live and work in the South Coast Air Basin and who suffer the consequences of its air quality, CEQA does not recognize misoneism as a basis for eliminating feasible air quality mitigation measures.

**i. The yard tractor measures (MM AQ-15 and AQ-17) are feasible, and can be strengthened to require zero emission yard tractors**

The Port fails to overcome the presumption that the 2008 EIR mitigation measures for yard tractors are feasible. Further, the Final SEIR fails to consider all feasible mitigation measures for yard tractors.

The 2008 EIR required that all yard tractors utilize the cleanest available NO<sub>x</sub> alternative-fueled engines meeting 0.015 gm/hp-hr for PM. Today, none of the yard tractors meet the engine requirement. In a legally insufficient exercise of post-hoc rationalization, the Port states that it failed to implement this mitigation measure because doing so would mean having to replace yard tractors with remaining useful life. Final SEIR at 2-83. The Port fails to provide any information to suggest that doing so would be so ruinous as to render the project impracticable to proceed with. *See Citizens of Goleta Valley v. Bd. of Supervisors*, 197 Cal. App. 3d 1167, 1181 (1988). The Final SEIR's drawn out plan to phase in compliance with an ultra-low NO<sub>x</sub> standard and Tier 4 final off-road engine emission rates for other criterial pollutants over the course of five years is equally inadequate. Final SEIR at 1-14.

As the Final SEIR points out, in order to meet the 2017 CAAP's and CARB's March 2017 resolution's goals of achieving up to 100% zero-emissions by 2030, "current yard tractors will need to be replaced by zero-emissions (i.e., electric powered) tractors over the next ten years." Final SEIR at 1-15. Yet, applying the same rationale as the Port applies in justifying its unjustifiable failure to implement the 2008 EIR's mitigation measures for yard tractors, this will require the replacement of hundreds of low NO<sub>x</sub> yard tractors with remaining useful life. The

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<sup>5</sup> Zero emissions cargo handling equipment is available, and where still necessary, the Port must plan for its demonstration and deployment. *See* Attachment D22.

<sup>6</sup> CARB, Resolution 17-7, 2016 State Strategy for the State Implementation Plan (March 23, 2017), *available at* <https://www.arb.ca.gov/planning/sip/2016sip/res17-7.pdf>.

Final SEIR fails to describe how doing so will suddenly become economically feasible, and in doing so lays the foundation to once again renege on its promises a few years down the line.

The Final SEIR fails to overcome the presumption of feasibility of the 2008 EIR's mitigation measures for yard tractors. The Port should strengthen the yard tractor mitigation measures to require replacing existing tractors with electric yard tractors in the near-term.

**ii. The top pick measure (MM AQ-17) is feasible and should be strengthened to require zero-emission top picks**

Contrary to the requirements of the 2008 EIR, none of the CS terminal's top picks were alternative-fueled, and only four met the 0.015 gm/hp-hr PM standard. Final SEIR Table 1-1. Although this measure was found to be feasible when the 2008 EIR was adopted, the Port now conjures a finding of infeasibility based on China Shipping's after-the-fact, unsupported statements that replacing its top picks would be "prohibitively expensive." Final SEIR at 1-16. But the Port fails to provide any figures that would come remotely close to satisfying CEQA's requirements to deem a mitigation measure economically infeasible. CEQA does not permit China Shipping to circumvent the environmental impact review process, and it does not allow the Port to acquiesce to such actions.

The Final SEIR does not provide an adequate explanation for failing to replace its top picks and fails to overcome the presumption that the 2008 EIR's top pick measure is feasible. The Port's proposed schedule for replacement of top picks is unnecessarily protracted and should be modified to require the replacement of all top picks with Tier 4 compliant top picks within two years of the Revised Project. Further, to meet CARB's goal of 100% zero emission cargo handling equipment by 2030, the Port should require the terminal to participate in a zero-emission top pick demonstration project.<sup>7</sup>

**iii. The forklift measure (MM AQ-17) is feasible and should be strengthened to require zero emission forklifts**

The Final SEIR does not provide any logical justification for the Port's failure to comply with the 2008 EIR's mitigation measure for forklifts, and further seeks to delay the replacement of existing forklifts for several years. In a fashion all too familiar to the Final SEIR, the Port attempts to absolve itself from its failure to abide by the requirements of the 2008 EIR by vaguely characterizing the replacement of forklifts as "prohibitively expensive," Final SEIR at 2-86, again without providing any figures that would come remotely close to satisfying CEQA's requirements to deem a mitigation measure economically infeasible. The Final SEIR fails to overcome the 2008 EIR forklift mitigation measure's presumption of feasibility and should replace all high-tonnage forklifts with Tier 4 or cleaner engine forklifts immediately.

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<sup>7</sup> The Port is advertising the demonstration of an electric top pick. See Attachment D21. At a minimum, we expect the same level of fanfare and interest to demonstrate zero emission top picks at the China Shipping Terminal.

Further, the Port acknowledges that zero-emission 5-ton forklifts are feasible and available. *See* Final SEIR at 2-86. The Port should not delay deployment of zero-emission 5-ton forklifts and strengthen this mitigation measure by requiring their adoption within one year after lease amendment.

**iv. The 2008 electric rubber-tired gantry crane measure (MM AQ-17) is feasible**

The 2008 EIR required that all rubber-tired gantry cranes shall be electric by January 1, 2009. Now a decade after that deadline, not a single of the rubber-tired gantry cranes (RTGs) is fully electric. Final SEIR Table 1-1. The Final SEIR seeks to gut 2008 EIR's MM AQ-17 by maintaining diesel-powered RTGs for years to come and committing to replacing only four of its RTGs by the seventh year after the amendment of the Port's lease with China Shipping. This is a huge step backward, and one that is not supported by the law.

The Final SEIR attempts to scrap the requirement to transition to electric RTGs by saying that it is too expensive. Final SEIR at 2-16. The fact that a mitigation measure is expensive or that it may make the project less profitable is not enough to show that the measure is infeasible. What CEQA requires is "evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." *See Citizens of Goleta Valley v. Bd. of Supervisors*, 197 Cal. App. 3d 1167, 1181 (1988). The scant figures contained in the Final SEIR are insufficient to support the Port's conclusion.

Next, the Final SEIR goes on to say, without providing any evidence to support its vague statements, that installing all electric RTGs would require "substantial and costly modifications of the container yard." Final SEIR at 1-16. Since none of these issues were raised during the development of the 2008 EIR, one must assume that something happened to the configuration of the container yard to now require substantial modifications for the installation of electric RTGs. The Port's explanations are simply insufficient. If it took three steps backwards when asked to take a step forward, the Port should not get to claim that the burden of moving four steps is now too high.

Electric RTGs are feasible and commercially available, as the Port clearly acknowledges. Final SEIR at 2-81.<sup>8</sup> And even accepting the Port's woefully unsupported statements as true, the CS terminal's layout is ready to accept at least four all-electric RTGs as of today. Final SEIR at 1-16. Yet, in another showing of relentless entrenchment, the Final SEIR seeks to further delay the deployment of these RTGs for no less than seven more years. *Id.* This recommendation defies all reason.

For the above reasons, the Final SEIR fails to overcome the presumption that requiring replacement of all RTGs with zero emission RTGs is feasible.

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<sup>8</sup> In fact, electric gantry cranes are feasible as evidenced by CEQA mitigation measures adopted and implemented only miles away at the Port of Long Beach. *See* Attachment C12.

**D. The LNG truck measure (MM AQ-20) is feasible, and can be strengthened to require zero emissions vehicles**

The Final SEIR suggests that the 2008 EIR MM AQ-20 requirements are infeasible due to “industry structural constraints.” Final SEIR at 1-18. Specifically, the Port contends that China Shipping cannot control the type of trucks that haul cargo through the CS terminal. Final SEIR at 2-89. This is simply not true, as evidenced by the Final SEIR’s lease measure AQ-2. *See* Final SEIR at 1-21. If China Shipping has the ability to control the access of trucks by implementing a priority access system for zero and near-zero emission trucks, then it can also restrict the entry of diesel trucks to the terminal.<sup>9</sup> Further, since the Port must transition to an appointment system as required by the 2017 CAAP, this same system can be utilized to restrict appointments to zero and near-zero trucks.

Even taking the Port’s argument that the matter of drayage truck feasibility requires a port-wide approach at face value, the solution is at its hands. The joint proclamation of the Mayors of Long Beach and Los Angeles puts both ports on a path to a zero-emission future, which will necessarily require port-wide change. Also, CARB rules currently ban trucks with pre-2007 engines from doing business at the Port and, by 2023, this ban will apply to all trucks with pre-2010 engines. *See* Cal. Code. Regs. §2027. This shows that the port economic ecosystem can live with port-wide changes in drayage.

In 2008, the Port deemed MM AQ-20 to be feasible. Over the past eleven years, the Port has sat on its hands, doing absolutely nothing to ensure the implementation of this mitigation measure. CEQA does not recognize failure to act as proof of infeasibility. The Final SEIR fails to overcome the presumption that 2008 EIR MM AQ-20 was and remains feasible.

**E. The Port should keep and amend the throughput tracking measure (LM AQ-23)**

The purpose of the throughput tracking measure (LM AQ-23) is to provide a means by which to implement new or additional mitigation measures in such case where terminal throughput and the associated air emissions exceeded those projected by the 2008 EIR. The Final SEIR now seeks to eliminate this measure as redundant, pointing to the idea that the Final SEIR “already takes into account the maximum capacity of the terminal and growth in TEU volume and applies all feasible mitigation measures to address future air quality impacts.” Final SEIR at 1-19.

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<sup>9</sup> The Port stands alone in suggesting that the answer to the problem of drayage truck emissions is to cross its arms and wait. Both the South Coast Air Quality Management District and the California Air Resources Board have told the Port that it has the power, ability, and responsibility to reduce emissions from drayage trucks by implementing zero emission and near zero emission drayage truck requirements in the near term. *See* Ex. D23 (letter from CARB exhorting the Ports of Los Angeles and Long Beach to take more action to accelerate the adoption of zero emission and low nitrogen oxide (NOx) emitting vehicles and equipment); SCAQMD Letter reproduced in the Final SEIR at 5-6 (urging the Port to begin implementing zero and near zero emission drayage truck requirements at the China Shipping Terminal).

The irony of this argument is tragically comical. Not only does the Port acknowledge that actual throughput exceeded the projections of the 2008 EIR, *id.*, but the very reason underlying the need for this Final SEIR is that, accepting the Port's contentions are true, it widely overshot the feasibility of ten mitigation measures and one lease measure. In doing so, the Port has subjected millions of people in the South Coast Air Basin to elevated levels of air pollution for over a decade. In seeking to eliminate the throughput tracking measure, the Port says to the public, "trust that we've done the right thing this time around." The Port's argument falls woefully short, both legally and morally.

This is a trust that the Port has violated in the past. Under the Amended Stipulated Judgment, the Port was required to provide the Plaintiffs with a quarterly accounting of the China Shipping Terminal's throughput. *See* Ex. B1 at 31. However, the Port reneged on their part of the agreement, failing to provide the quarterly reports required by the ASJ. It was precisely this failure to report that allowed years of noncompliance to go unnoticed. Among other things, timely and accurate throughput accounting are necessary to calculate the TEU cap penalty payments that the Port will need to make under the ASJ. *See* Ex. B at 31.

The Final SEIR fails to demonstrate that the throughput tracking measure is either infeasible or unnecessary. In light of the Port's history of noncompliance with mitigation measures and its previous failures to adequately project throughput levels, the Port should require annual throughput evaluations.

### **III. The Port must enhance its mitigation monitoring and enforcement program**

When a project is approved despite having impacts that cannot be mitigated below the threshold of significance, CEQA requires that a mitigation monitoring and enforcement program be adopted. And while the Final SEIR does that, it merely copies and pastes the same program that proved ineffective in monitoring and enforcing the 2009 mitigation measures.<sup>10</sup>

The Port's mitigation monitoring and enforcement program merely pays lip service to CEQA's requirements. It makes no effort to undo the wrongs of the past, or even seek to prevent the management failures that led to the current situation with China Shipping. The Final SEIR's proposed mitigation monitoring and reporting program is a testament to the Port's approach to this CEQA process as a mere exercise of box-checking.

To understand our demands for a more robust mitigation monitoring and enforcement program, one must only look to the Port's actions that lead to the failure to implement key mitigation measures required by the 2008 EIR. As detailed in our previous comment letters, the Port granted, behind closed doors, secret waivers to China Shipping from the Project's AMP

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<sup>10</sup> Compare Final SEIR, Draft Supplemental Mitigation Monitoring and Reporting Program at 2, with 2008 FEIR Mitigation Monitoring and Reporting Program at 2-13-2-22. Both mitigation monitoring programs primarily consist of the Port including the mitigations in China Shipping's lease agreement.

requirements in order to cut costs.<sup>11</sup> At the public's expense, and by order of then-Mayor of Los Angeles Antonio Villaraigosa, the Port hand-delivered these backdoor waivers to China Shipping's Shanghai headquarters.<sup>12</sup> Spanning the course of at least four years, these waivers effectively exempted China Shipping from the requirement to adopt AMP until it became mandatory under state law.<sup>13</sup> This is precisely the type of action that an effective mitigation and enforcement program is intended to prevent, and why meaningful oversight is paramount this time around.

At the very least, the mitigation monitoring and enforcement program should establish a requirement to publicly disclose the implementation status of all mitigation measures. Further, a third party should be selected to oversee the monitoring reporting process. In addition, a permanent and independent oversight committee, fully funded to audit the implementation of all mitigation measures throughout the port, should be created. *See* NRDC et al. November 16, 2018 comments at IV.

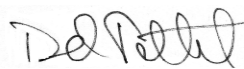
#### IV. Conclusion

In sum, the Port has failed, once again, to comply with CEQA. Because the record shows that China Shipping has no interest in complying with the mitigation measures in the 2008 EIR, the Board should terminate the lease with China Shipping and find a tenant that can comply with CEQA, and partner with the City in fulfilling its zero emission goals. Absent that, it is difficult to see how the Port will comply with CEQA or meet its project objectives to grow the terminal sustainably.

Sincerely,



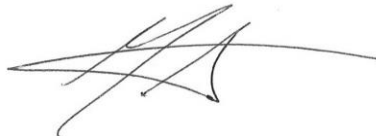
Melissa Lin Perrella  
Natural Resources Defense Council



David Pettit  
Natural Resources Defense Council



Jaclyn H. Prange  
Natural Resources Defense Council



Gonzalo E. Rodriguez  
Natural Resources Defense Council

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<sup>11</sup> *See* Attachment A13 (POLA000633-634).

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

<sup>13</sup> *See* Attachment A13 (POLA000633-34); Attachment A23 (POLA000822-23); Attachment A25 (POLA00825-26); Attachment A61 at POLA001429-30; Attachment A62 at POLA001462.

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Taylor Thomas  
East Yard Communities for Environmental Justice

Dr. John G. Miller, MD  
Peter M. Warren  
Kathleen Woodfield  
San Pedro and Peninsula Homeowners Coalition

Joseph K. Lyou, Ph.D.  
Coalition for Clean Air

Chuck Hart  
San Pedro Peninsula Homeowners United, Inc.

Jessica Tovar  
Urban and Environmental Policy Institute, Occidental College

Sylvia Betancourt  
Long Beach Alliance for Children with Asthma

Enclosures:  
Index of additional documents supporting these comments  
Copies of additional documents

cc:

Los Angeles Mayor Eric Garcetti  
mayor.helpdesk@lacity.org

City of Los Angeles Chief Sustainability Officer Lauren Faber O'Conner,  
lauren.faber@lacity.org

Los Angeles Councilmember Joe Buscaino  
councilmember.buscaino@lacity.org

Lieutenant Governor and State Lands Commissioner Eleni Kounalakis  
c/o Jennifer.Lucchesi@slc.ca.gov

State Controller and State Lands Commissioner Betty T. Yee  
c/o Jennifer.Lucchesi@slc.ca.gov

Finance Director and State Lands Commissioner Keely Bosler  
c/o Jennifer.Lucchesi@slc.ca.gov

Deputy Controller for Environmental Policy Anne Baker

Chris Cannon

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c/o Jennifer.Lucchesi@slc.ca.gov

Members, Port of Los Angeles Board of Harbor Commissioners  
commissioners@portla.org

Eugene Seroka, Executive Director, Port of Los Angeles  
gene\_seroka@portla.org

Wayne Nastri, Executive Officer, South Coast Air Quality Management District  
wnastri@aqmd.gov

**Index of Attachments in Support of NRDC, et al.’s Comments on the Final SEIR for the China Shipping Project and Prior Comments on the RDSEIR and DSEIR**

*Note: Documents added to this index in support of NRDC’s comments on the Final SEIR are italicized. All other documents listed in this index were submitted with NRDC’s comments on the DSEIR or RDSEIR and support both sets of comment letters.*

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Trucks.com - Truck Companies That Don't Develop Electric Vehicles Will Get Left Behind, July 5, 2017 .....H2

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BYD USA - Class 8 Terminal Tractor Brochure..... J1

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California Air Resources Board - Letter of Approval - CIHD-2016-063,  
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Kalmar Press Release - Kalmar Delivers first 5th Generation Automatic Stacking Cranes  
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