

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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October 7, 2019

File Ref: SCH #2003061153

City of Los Angeles Harbor Department
Christopher Cannon, Director
Environmental Management Division
P.O. Box 151
San Pedro, CA 90733
ceqacomment@portla.org

Subject: Final Supplemental Environmental Impact Report (SEIR) for Berth 97-109 [China Shipping] Container Terminal Project, Los Angeles County

Dear Mr. Cannon:

The California State Lands Commission (Commission) staff has reviewed the Final SEIR for the Berth 97-109 [China Shipping] Container Terminal Project (Project) prepared by the Los Angeles Harbor Department (LAHD), which operates the Port of Los Angeles (Port). The LAHD, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses (State CEQA Guidelines, § 15386, subd. (b).) Staff submitted comments on the Draft SEIR on September 29, 2017 (see attached letter). The comments were also provided in keeping with the Commission's responsibility to provide oversight of the State's granted tidelands and submerged lands pursuant to Public Resources Code section 6009.1, subdivision (b). Please consider the following comments as the Los Angeles Harbor Commission considers certifying the Final SEIR on Tuesday, October 8, 2019.

Commission Jurisdiction and Public Trust Lands

Our attached comment letter dated September 29, 2017, provides a summary of the Commission's jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways as well as certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306).

Environmental Review

Climate Change

1. Mitigation Measure (MM) Greenhouse Gases (GHG)-1 – LED Lighting: Commission staff had recommended moving the implementation timeline for this measure up considerably in order to maximize energy efficiency, reduce energy and maintenance costs, and ultimately reduce the amount of GHG emissions. Staff still recommends completing MM GHG-1 in 12 to 24 months of certification of the SEIR.
2. Lease Measure (LM) GHG-1 – GHG Credit Fund: Commission staff had recommended raising the contribution level considerably more than the one-time \$250,000 contribution that was previously proposed in the SEIR. Commission staff appreciates that the LM was updated to pay into a GHG Fund in the amount of \$250,000 per year for 8 years instead of the one-time \$250,000 contribution.
3. Sea-Level Rise (SLR): In our comment letter dated September 29, 2017, Commission staff urged LAHD to develop, and outline in the SEIR, a long-term adaptation strategy to improve the Port's resiliency (see comment #10 in the attached letter). Staff is disappointed that the comment was not addressed in the SEIR; however, the Commission has recently received the Port's AB 691 SLR vulnerability assessment. Commission staff intends to use the information in the assessment to support the implementation of adaptation strategies and continue to encourage the Port to integrate its vulnerability assessments and planning documents with specific project plans, like those for the China Shipping (CS) Container Terminal.

Environmental Justice

4. Environmental Justice Analysis: In our comment letter dated September 29, 2017, Commission staff had commented that the SEIR should include an environmental justice analysis (see comment #11 in the attached letter). Staff was particularly concerned based on information from CalEnviroScreen,¹ because the CS Container Terminal is located within a high pollution area relative to the rest of the State, with a pollution burden percentile of 98 percent. The Census Tracts closest to the terminal (Census Tracts 6037295103, 6037296300, 6037296500, and 6037296210) have pollution burden percentiles ranging from 83 percent to 92 percent relative to the rest of the State, depending on the Census Tract. As a result, the communities near the CS Container Terminal are disproportionately impacted by various sources of pollution, health hazards, and socioeconomic burdens. A few of the higher impacts in Census Tracts closest to the CS Container Terminal include diesel emissions, toxic releases, presence of hazardous waste, and groundwater threats. In addition,

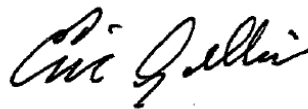
¹ CalEnviroScreen is a screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution. CalEnviroScreen ranks census tracts in California based on potential exposures to pollutants, adverse environmental conditions, socioeconomic factors and prevalence of certain health conditions. CalEnviroScreen 3.0 can be accessed here: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

children, the elderly, and minority populations are affected by health hazards, which include asthma, cardiovascular irregularities, and low birth weights.

The Commission adopted an updated environmental justice policy in December 2018 to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs.² Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations. Commission staff still disagrees with the LAHD's assertion that an examination and discussion of environmental justice need not be included in the SEIR "...because CEQA does not require that analysis." (Revised Draft SEIR p. ES-15.). Commission staff believes that the Project would increase the public health burden on already disproportionately affected communities and result in significant cumulative impacts. These environmental justice concerns should be discussed as part of the SEIR, which should include feasible mitigation to lessen or avoid increased impacts on environmental justice communities.

Thank you for the opportunity to comment on the Final SEIR. Staff requests that you consider these trustee agency comments as the Los Angeles Harbor Commission considers certifying the Final SEIR on October 8, 2019. Please refer questions concerning staff's comments to Reid Boggiano, Public Land Management Specialist, at (916) 574-1900 or reid.boggiano@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

Attachment: Commission comment letter dated September 29, 2017

cc: Eugene D. Seroka, Executive Director
Port of Los Angeles

K. Keen, Commission
R. Boggiano, Commission
S. Scheiber, Commission

² The Commission's environmental justice policy is found at <https://www.slc.ca.gov/envirojustice/>.

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September 29, 2017

File Ref: SCH #2003061153

City of Los Angeles Harbor Department
Christopher Cannon, Director
Environmental Management Division
P.O. Box 151
San Pedro, CA 90733

Subject: Draft Supplemental Environmental Impact Report (SEIR) for Berth 97-109 [China Shipping] Container Terminal Project, Los Angeles County

Dear Mr. Cannon:

The California State Lands Commission (Commission) staff has reviewed the subject SEIR for the Berth 97-109 [China Shipping] Container Terminal Project (Project) prepared by the Los Angeles Harbor Department (LAHD), which operates the Port of Los Angeles (Port). The LAHD, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Staff submits these comments and suggestions in its capacity as a trustee agency, pursuant to State CEQA Guidelines section 15386, for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses. Staff also provides these comments in keeping with its responsibility to provide oversight of the State's granted tidelands and submerged lands pursuant to Public Resources Code section 6009.1, subdivision (b).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all

people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

The California Legislature is vested with the authority to enact laws involving the State's sovereign Public Trust lands. Since 1851, the Legislature has periodically transferred portions of the State's Public Trust lands to over 80 local governmental entities for management purposes, including California's five major ports. These granted lands are held in trust for the people of California and must be used for Public Trust purposes, including water-related commerce, navigation and fishing. The granting language conveys the State's legal title to the sovereign lands subject to certain terms and conditions and subject to the common law Public Trust Doctrine. The City of Los Angeles, acting by and through the Port, is a trustee of sovereign tide and submerged lands granted by the Legislature under Chapter 656, Statutes of 1911 and Chapter 651, Statutes of 1929, and as amended.

In 2016, the Commission adopted a five-year Strategic Plan,¹ identifying ports and harbor districts as essential partners for driving economic growth and managing coastal resources. The Strategic Plan identified key actions that relate to ports and harbor districts, including working with various partners to ensure port policies and programs are consistent with Executive Order B-32-15, including the Freight Mobility Plan, the Sustainable Freight Pathways to Zero and Near-Zero-Emissions and the California Energy Commission's Integrated Energy Policy Report, and working with grantees to ensure that Public Trust land and revenue uses are consistent with the Public Trust.

Project Description

The LAHD prepared a Draft SEIR to supplement and update the Berths 97-109 [China Shipping] Container Terminal Project Environmental Impact Statement (EIS)/EIR, certified on December 18, 2008, which evaluated the environmental impacts of the construction and operation of the China Shipping (CS) Container Terminal at Berths 97-109. Subsequent to the approval of the 2008 EIS/EIR and construction of the project, the LAHD proposed to modify or eliminate a number of mitigation measures required for the project, and determined that the capacity of the terminal as built exceeded the capacity evaluated in the 2008 EIS/EIR. Because LAHD determined that these events constituted changed circumstances and new information within the meaning of the State CEQA Guidelines section 15162, it is required to prepare additional environmental documentation, in this case the Draft SEIR, before approving the revised Project, including modifying or eliminating previously approved mitigation measures. In proposing these changes, LAHD seeks to advance the original goals and objectives of the CS Container Terminal to maximize the efficiency and capacity of terminals while raising environmental standards through the application of feasible mitigation measures.

¹ California State Lands Commission. Strategic Plan: 2016-2020. December 18, 2015. Available at: <http://www.slc.ca.gov/About/StrategicPlan.html>.

From the Project Description, Commission staff understands that the Project:

- Makes minor changes to the continued operation of the CS Container Terminal by modifying 10 operational mitigation measures (air quality and transportation) and one lease measure originally adopted in the 2008 EIS/EIR
- Eliminates some existing measures that have proved to be infeasible or unnecessary, institutes new mitigation measures, and modifies other existing measures to enhance their effectiveness
- Assumes an incremental increase in terminal throughput level in future years, compared to 2008 EIS/EIR assumptions, based on re-assessing terminal capacity

Environmental Review

Commission staff requests that the LAHD consider the following comments on the Project's Draft SEIR.

General Comments

1. The revised mitigation strategies in the Draft SEIR are inconsistent with the San Pedro Bay Ports' Draft Clean Air Action Plan (CAAP) 2017 Update.² While the Draft CAAP 2017 Update identifies a greenhouse gas (GHG) emission reduction target from Port-related sources of 80 percent below 1990 levels by 2050, thus exceeding the emission reduction requirements of AB 32 and SB 32, the Draft SEIR falls short in proposing measures that align with the CAAP Update's proposed strategies and timelines, which will ultimately support the Ports in reaching their new target. Please clarify how these documents will remain compatible and how the LAHD will achieve the Draft CAAP 2017 Update reduction targets given the conflict created by the implementation of the revised Project.
 - Recommendation: Implement a monitoring plan to ensure emissions reduction goals and revised mitigation measures are being met and consistently improve performance
 - Recommendation: Invest in carbon offset projects (e.g., California Cap and Trade Program, solar and wind projects, and ecosystem restoration, such as wetland and eelgrass enhancement) to offset the unavoidable GHG emissions calculated in the Draft SEIR, and to help achieve a zero-emissions goal for the Port

Additionally, pursuant to section 15092 of the State CEQA Guidelines, lead agencies must reduce or avoid significant effects to the extent feasible prior to approving a project, even if unavoidable significant effects remain after application of all feasible mitigation. As explained in more detail below, Commission staff believes feasible mitigation exists that would lessen the revised Project's significant effects beyond what LAHD proposes in the Draft SEIR, and that LAHD should consider these suggestions prior to approving the revised Project.

² San Pedro Bay Ports. Clean Air Action Plan 2017. Draft Final Clean Action Plan Update. July 2017. Available at: https://www.portoflosangeles.org/pdf/CAAP_2017_Draft_Document-Final.pdf.

Air Quality and Greenhouse Gas Emissions

2. Environmental Baselines and Future Emissions Scenarios: The Draft SEIR describes two environmental baselines, the “2014 Mitigated Baseline” and “2014 Unmitigated Baseline,” and two future emissions scenarios, the “Revised Project” and “FEIR Mitigated Scenario.” However, the language used to refer to and describe these baselines and future scenarios is inconsistent and confusing, particularly in the Project Description, and should be clear and consistent in the Draft SEIR. For example, the “2014 Unmitigated Baseline” is not referred to as such in the Project Description (in Section 2.6, Baselines and Analytical Framework for Assessing Impacts of the Approved and Revised Project), nor is it clearly described. Commission staff suggests that LAHD: (1) use consistent terminology when referring to each baseline and future scenario throughout the Draft SEIR; and (2) clearly describe each baseline and future scenario in the Project Description. For an example of how this can be achieved, refer to Section 2.0, Emissions Methodology – Scenarios in Appendix B1, Air Emissions (page B1-4).
3. Mitigation Measure (MM) AQ-9 – Alternative Maritime Power (AMP): The 2008 EIS/EIR required that China Shipping ships calling at Berths 97-109 use 100 percent AMP by January 2011; however, this goal was not met, and the revised MM AQ-9 commits to a lower compliance rate of 95 percent by January 1, 2018. Reasons given for failure to enact the measure include the following: not all vessels are AMP-capable, and circumstances arise where an AMP-capable berth is unavailable or an AMP-capable ship is not able to plug in. As discussed in the Draft CAAP 2017 Update, the California Air Resources Board (CARB) directed its staff in March 2017 to amend the At-Berth Regulation by September 2018 to achieve up to 100 percent compliance by 2030 in San Pedro Bay and other ports near environmental justice communities (this action would also require at-berth emission reductions from vessels not currently subject to the regulation, such as bulk, break bulk, tankers and auto carriers). MM AQ-9, as written in the Draft SEIR, falls short of this CAAP goal and forthcoming CARB regulation, without discussing whether and to what extent these could improve the feasibility of implementing a 100 percent AMP. With this in mind, Commission staff believes LAHD and China Shipping should develop a clear path forward toward achieving 100 percent compliance by 2030 and incorporate those measures/steps in the revised MM AQ-9.
4. MM AQ-10 – Vessel Speed Reduction Program (VSRP): VSRPs can be invaluable tools to reduce the amount of particulate matter (PM), nitrogen oxides (NO_x), and sulfur oxides in the atmosphere. These compounds are among the most dangerous to human health and safety and environmental quality. The 2008 EIS/EIR required that as of 2009, 100 percent of oceangoing vessels calling the CS Container Terminal comply with the VSRP within a 40-nautical mile (nm) radius of Point Fermin. While the VSRP compliance within 20 nm has been fairly consistent over 90 percent, VSRP compliance in the 20- to 40-nm range seems to be more difficult to achieve. The rate of compliance improved within that range from 2009 to 2014, but never exceeded 90 percent. In 2008, the Port instituted an incentive program that offers discounted berthing fees to vessel operators that reach 100 percent compliance, but it does not appear to be enough to spur widespread compliance

within the 20- to 40-nm range. Several reasons are given for the inability of all vessels to meet the requirement. For example, non-compliance with the VSRP is typically the result of pressure on vessel schedules caused by weather, port delays, and mechanical problems. In order for MM AQ-10 to be realized, there needs to be a more aggressive incentive plan implemented to achieve 100 percent compliance. For example, either the incentive payments need to be more effective, or other methods of ensuring compliance need to be explored, tested, and implemented.

The mitigation measure also allows vessels to submit an alternative compliance plan for approval by the LAHD as a substitute for participation in the VSRP; however, it is unclear whether the LAHD has the authority to approve alternative compliance plans. This issue needs to be resolved before it is presented as a part of MM-AQ-10. There is a Memorandum of Understanding (MOU), executed in 2000, between LAHD, CARB, and other local, state, and federal agencies, stipulating that all alternative compliance plans to achieve the NO_x emission reduction goals of the VSRP must be submitted to CARB for approval.³ An addendum to this MOU in 2001 both extended the MOU indefinitely and stated that a guidance document had to be created and used to inform the creation of alternative plans. If a guidance document has been produced, it should be cited and attached as an appendix. Commission staff is concerned that without more explicit details that describe which vessels may submit alternative compliance plans, and what the requirements of an alternative compliance plan are, there will be a lack of rigorous standards applied to the alternative plan process, and therefore, those plans cannot be considered adequate substitutes for compliance with the VSRP.

5. MM AQ-15 – Clean-Diesel Yard Tractors: The Draft SEIR provides incremental steps for China Shipping to replace and update yard tractors in the CS Terminal to be alternative fuel yard tractors or to exceed Tier 4 final off-road engine standards for PM and NO_x. However, as discussed in the San Pedro Bay Ports' Draft CAAP 2017 Update, CARB directed its staff in March 2017 to develop amendments, which are anticipated to be completed by March 2019, to the cargo handling equipment regulations, such as yard tractors, to achieve up to 100 percent compliance with zero emissions by 2030 in San Pedro Bay and other ports near environmental justice communities. MM AQ-15, as written in the Draft SEIR, falls short of this CAAP goal and forthcoming CARB regulation. LAHD and China Shipping should develop a clear path forward to achieving 100 percent compliance by 2030 and incorporate those measures/steps in the revised MM AQ-15.
6. MM AQ-17 – Yard Equipment at Berth 97-109 Terminal: The Draft SEIR provides incremental steps for China Shipping to replace and update forklifts, top-picks, rubber-tiered gantry cranes, sweepers, and shuttle buses to, depending on the type of equipment, meet or exceed Tier 4 final off-road engine standards for PM and NO_x, be electric, be electric-diesel hybrids, or be alternative fuel/cleanest available/zero emissions. However, as discussed in the San Pedro Bay Ports' Draft CAAP 2017 Update, CARB directed its staff in March 2017 to develop amendments (anticipated

³ California Air Resources Board. 2001. Memorandum of Understanding, City of Los Angeles Harbor Department Agreement No. 2133 (<https://www.arb.ca.gov/ports/marinevess/documents/mou.pdf>).

by March 2019) to the cargo handling equipment regulations to achieve up to 100 percent compliance with zero emissions by 2030 in San Pedro Bay and other ports near environmental justice communities. MM AQ-17, as written in the Draft SEIR, falls short of this CAAP goal and forthcoming CARB regulation. LAHD and China Shipping should develop a clear path forward to achieving 100 percent compliance by 2030 and incorporate those measures/steps in the revised MM AQ-17.

7. MM AQ-20 – Liquefied Natural Gas (LNG) Trucks: The 2008 EIS/EIR required that from 2015 to 2017 at least 70 percent of drayage trucks be LNG-fueled and that the LAHD be responsible for the trucks meeting compliance. However, the Draft SEIR does not include this mitigation measure because it is considered infeasible to further reduce emissions from drayage trucks due to industry structural constraints, in addition to technology and financial constraints. As described in the Draft SEIR, only 8.2 percent of drayage trucks are LNG-fueled, thus falling short of the requirements laid out in MM AQ-20. While not quantified, the Draft SEIR suggests that future emissions reductions from drayage trucks will be achieved through the implementation of the Port-wide Clean Trucks Program, which is part of the CAAP 2017 Update, and the new lease measure LM AQ-2, which provides priority access for zero/near-zero-emissions trucks. While it is understood that barriers exist in achieving emissions reductions from drayage trucks, the LAHD has a responsibility to comply with CARB's 2007 Drayage Truck Regulation, and the responsibility will continue as new regulations are adopted under CARB's Sustainable Freight Transport Initiative. A key component of the mobile source strategy for heavy-duty vehicles is the adoption of a more stringent engine performance standard reflecting technology that is effectively 90 percent cleaner than today's standards. These existing and forthcoming requirements and incentives suggest to Commission staff that improved compliance efforts toward this measure, rather than elimination of the measure, is a feasible option to reduce the impact. To achieve the further reductions associated with the early deployment of these cleaner heavy-duty technologies, CARB and the South Coast Air Quality Management District estimate that by 2023, approximately 100,000 to 150,000 trucks would need to have engine technologies equivalent to emissions represented by a 0.02 gram per brake horsepower-hour (g/bhp-hr) low-NO_x standard.

To satisfy MM AQ-20, the LAHD should consider setting emission reduction goals aligned with the proposed measures in CARB's revised State Implementation Plan designed to achieve emission reductions from heavy-duty trucks by 2023 and 2031. Although advanced technologies in the freight movement sector are in the early stages of development, by 2023, LAHD will be responsible for complying with new engine performance standards; therefore, it would be in the Port's best interest to invest in strategies and actions towards achieving near-zero and zero emission technologies for heavy-duty trucks. Investment in cleaner engine technologies will ultimately bring emission reductions to the LAHD, as drayage trucks are a major contributing source of GHG emissions at the Port. Commission staff recommends LAHD develop additional strategies that achieve emissions reductions from drayage trucks. For example, the LAHD should outline a clear path forward in the Draft SEIR, with a timeline that is aligned with the development and availability of new technologies, as well as new regulations for PM and NO_x reductions.

Climate Change

8. MM GHG-1 – LED Lighting: Many mitigation measures may be difficult to achieve due to the lack of available technology, or low supply and prohibitive costs for new technologies that have not yet reached full market-scale. However, LED lighting technology is both widely available and adequately supplied. LED lighting requires little to no maintenance once installed, uses one third the amount of energy of conventional lighting, and can provide light instantly, as opposed to high-pressure sodium fixtures that require lengthy warm-up times before reaching full luminosity. It is feasible to complete MM GHG-1 in 12 to 24 months. Commission staff recommends moving the implementation timeline for this measure up considerably in order to maximize energy efficiency, reduce energy and maintenance costs, and ultimately reduce the amount of GHG emissions.

9. Lease Measure (LM) GHG-1 – GHG Credit Fund: The amount the LAHD determined to be the maximum feasible contribution level to the carbon offset fund does not appear to be supported by substantial evidence, instead appearing in the Draft SEIR as a conclusory statement. In order to improve the document's analysis and more adequately comply with its lead agency obligations, the LAHD should consider Commission staff's discussion below and explore the feasibility of implementing the level of funding suggested. The measure proposes the tenant will pay up to \$250,000 into a carbon offset credit fund; however, that amount will only mitigate a fraction of the present and future emissions above the significance threshold. In the "Proposed Mitigated" scenario, the projected carbon dioxide equivalent (CO₂e) emissions after all mitigation measures have been enacted will exceed the significance threshold (10,000 tons/year) in 2023 by 19,982 tons; in 2030, they will be over by 24,591 tons; in 2036, by 21,640 tons; and in 2045, by 20,701 tons. Therefore, the Project's total significant and unavoidable emissions are 86,914 tons of CO₂e. In California's most recent carbon credit sale, held on August 15, 2017, as part of the Cap-And-Trade Program, the minimum price of carbon/ton was \$13.57. The market price per ton of carbon is likely to rise substantially in the future; however, if the minimum price from the most recent auction was applied to the Project's anticipated amount of significant and unavoidable emissions, the cost would be \$1,179,422.98. This "back-of-the-envelope" calculation does not take into consideration compounding factors such as the discount rate and inflation, and is therefore a conservative estimate. What is clear is that a one-time \$250,000 contribution to a credit offset fund will not suffice as a meaningful mitigation for emissions that have both severe climate impacts as well as public health impacts. Instead, those costs will be disproportionately borne by the public, especially disadvantaged communities. Commission staff supports the inclusion of the measure; offset credits are an appropriate and necessary mechanism to supplement other tools such as energy efficiency and zero-emission technology in order to reach GHG reduction targets. However, Commission staff strongly recommends raising the contribution level to at least \$1,000,000, if not more, to the carbon offset credit fund. This does not constitute an undue burden on the tenant, reflects a conservative fair market price, and is a reasonable and feasible lease term condition.

10. Sea-Level Rise: As described in the Draft SEIR, the RAND Corporation prepared a study of potential sea-level rise impacts on Port facilities. This study suggests that Port infrastructure, including infrastructure within the CS Container Terminal, can accommodate mid- to high-range sea-level rise over time because the majority of the berths are located within higher elevation areas (7.62 feet to 12.14 feet). The study also suggests that the Port should only consider adaptation during future upgrades to its terminals, such as additional armoring or raising the terminals considerably higher, if the benefits are higher than the cost at the time of the upgrade. The conclusions from the RAND study, when applied to the proposed Project area, indicate that additional protection from sea-level rise is not warranted at this time due to the current state of scientific understanding of sea-level rise and climate variables; as a result, the Draft SEIR does not provide measures or strategies for the terminal to adapt to sea-level rise. In spite of this, however, the study also concludes that without any future adaptation strategies in place, the terminals will be vulnerable to sea-level rise during its lifetime, because storm surges combined with high tides and higher sea levels will more than likely flood the terminals, causing damage and disrupting operations.

The Port is an invaluable coastal asset and should be considered a high priority for protection and adaptation. According to the Sea-Level Rise Vulnerability Study for the City of Los Angeles, components of Port infrastructure will be vulnerable to sea-level rise. For example, the outer breakwater shelters the harbor from wave action and storm surge and is frequently overtopped during high wave events. As sea levels rise and storms become more severe, the outer breakwater could experience more severe wave overtopping, resulting in damage to the breakwater itself, leaving everything behind it at risk. Therefore, the breakwater will require higher elevations to help protect harbor infrastructure. Additionally, the network of roadways located within the harbor is vulnerable to flooding, inundation, and erosion. Damage to roads would have significant economic consequences because they are important for regional goods movement due to their proximity to the Port. Container terminals are also highly sensitive to flooding and inundation, which could render the terminals non-operational. Impaired container terminals will result in significant economic consequences if measures are not taken to adapt to sea-level rise in the long term. In light of these concerns, and to ensure the Port is able to fulfill its management responsibilities under its statutory trust grant and the Public Trust Doctrine, Commission staff urges LAHD to develop, and outline in the Draft SEIR, a long-term adaptation strategy to improve the Port's resiliency. Strategies may include building future infrastructure at higher elevations, including terminals, electrical infrastructure for container handling, roads within the Port, and the breakwater.

Environmental Justice

11. Environmental Justice Analysis: Environmental justice is defined by California law as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." This definition is consistent with the Public Trust Doctrine principle that the management of trust lands is for the benefit of all people. Industrial facilities and transportation projects have historically been built amongst traditionally

marginalized communities who do not have access to resources to address the environmental and public health impacts that come with these developments, causing an environmental justice issue.

Based on information from CalEnviroScreen,⁴ the CS Container Terminal is located within a high pollution area relative to the rest of the State, with a pollution burden percentile of 98 percent. In addition, the Census Tracts closest to the terminal (Census Tracts 6037295103, 6037296300, 6037296500, and 6037296210) have pollution burden percentiles ranging from 83 percent to 92 percent relative to the rest of the State, depending on the Census Tract. As a result, the communities near the CS Container Terminal are disproportionately impacted by various sources of pollution, health hazards, and socioeconomic burdens. A few of the higher impacts in Census Tracts closest to the CS Container Terminal include diesel emissions, toxic releases, presence of hazardous waste, and groundwater threats. In addition, children, the elderly, and minority populations are affected by health hazards, which include asthma, cardiovascular irregularities, and low birth weights.

The Commission adopted an environmental justice policy in October 2002 to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs.⁵ Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations. Commission staff disagrees with the LAHD's assertion that an examination and discussion of environmental justice need not be included in the Draft SEIR "...because CEQA does not require that analysis." (SEIR p. ES-11.) While CEQA does not use the term "environmental justice" in its text, environmental justice principles are woven throughout CEQA such that ignoring the subject is not advisable. In 2012, the Office of Attorney General issued a report entitled Environmental Justice at the Local and Regional Level – Legal Background⁶ which identifies the role of environmental justice considerations in ensuring adequate CEQA compliance. This principle is apparent in the Legislature's findings and declarations, which state in part:

- The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern." (Pub. Resources Code, § 21000, subd. (a).)
- We must "identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached." (*Id.* at subd. (d).)

⁴ CalEnviroScreen is a screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution. CalEnviroScreen ranks census tracts in California based on potential exposures to pollutants, adverse environmental conditions, socioeconomic factors and prevalence of certain health conditions. CalEnviroScreen 3.0 can be accessed here: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

⁵ The Commission is updating its environmental justice policy and anticipates considering the new policy and implementation plan in early 2018 (see www.slc.ca.gov/Info/EnviroJustice.html).

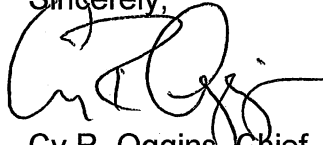
⁶ Office of the Attorney General. 2012. Environmental Justice at the Local and Regional Level – Legal Background. Available at: https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.

- “[M]ajor consideration [must be] given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.” (*Id.* at subd. (g).)
- We must “[t]ake all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.” (Pub. Resources Code, § 21001, subd. (b).)

There are other examples in specific provisions of CEQA and the State CEQA Guidelines that make it clear that lead agencies need to consider how the public health/environmental impacts from a project would affect marginalized communities, particularly in determining thresholds of significance and evaluating cumulative impacts. Commission staff believes that the revisions LAHD is proposing would increase the public health burden on already disproportionately affected communities and result in significant cumulative impacts, and as a result, should be discussed as part of the SEIR, including the addition of feasible mitigation to lessen or avoid increased impacts on environmental justice communities. Lastly, because LAHD has determined that the Air Quality, GHG, and Transportation impacts from the revised Project would be significant and unavoidable, Commission staff reminds LAHD that in preparing its statement of overriding considerations pursuant to State CEQA Guidelines section 15093, LAHD should disclose the tradeoffs it considered in balancing the benefits of the project against its unavoidable impacts. For example, while approval of the project may have region- or statewide economic and commercial benefits, the impact burdens would be experienced disproportionately by a community identified as economically and socially disadvantaged.

Thank you for the opportunity to comment on the subject Draft SEIR. Staff requests that you consider these trustee agency comments prior to certifying the Final SEIR. Please send copies of future Project-related documents, including electronic copies of the Final SEIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Kelly Keen, Environmental Scientist, at (916) 574-1938 or via e-mail at kelly.keen@slc.ca.gov. For questions about Commission jurisdiction, please contact Reid Boggiano, Public Land Management Specialist, at (916) 574-0450 or via email at reid.boggiano@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
K. Keen, Commission
R. Boggiano, Commission
S. Scheiber, Commission