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11 *Attorneys for Petitioners/Plaintiffs*

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
14

15 NATURAL RESOURCES DEFENSE
COUNCIL, INC., SAN PEDRO AND
16 PENINSULA HOMEOWNERS
COALITION, SAN PEDRO PENINSULA
17 HOMEOWNERS UNITED, INC., EAST
YARD COMMUNITIES FOR
18 ENVIRONMENTAL JUSTICE, and
COALITION FOR CLEAN AIR, INC., non-
19 profit corporations

20 Petitioners/Plaintiffs,

21 v.

22 CITY OF LOS ANGELES, PORT OF LOS
ANGELES, LOS ANGELES BOARD OF
23 ANGELES, and LOS ANGELES BOARD OF
HARBOR COMMISSIONERS, public
24 entities

25 Respondents/Defendants.
26

27 CHINA SHIPPING (NORTH AMERICA)
HOLDING CO., LTD, a Delaware
corporation; CHINA COSCO SHIPPING
28 CORPORATION LIMITED, a corporation;

Case No. **20STCP02978**

**VERIFIED PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Code Civ. Proc., §§ 1085, 1094.5; Pub.
Resources Code, § 21167 *et seq.* (CEQA)

1 COSCO SHIPPING (NORTH AMERICA),
2 INC., a California corporation; WEST BASIN
3 CONTAINER TERMINAL LLC, a Delaware
4 corporation; and DOES 1 THROUGH 20,
5 inclusive,

6 Real Parties in Interest.

7 Petitioners/Plaintiffs Natural Resources Defense Council, Inc., San Pedro and Peninsula
8 Homeowners Coalition, San Pedro Peninsula Homeowners United, Inc., East Yard Communities
9 for Environmental Justice, and Coalition for Clean Air, Inc. (collectively “Petitioners/Plaintiffs”)
10 bring this action on their own behalf, on behalf of their members, on behalf of the general public,
11 and in the public interest in order to enforce the California Environmental Quality Act (CEQA),
12 and to protect air quality and public health in and near the City of Los Angeles, California.

13 Petitioners/Plaintiffs allege as follows:

14 **INTRODUCTION**

15 1. This case is the most recent installment in a twenty-year battle between the Port of
16 Los Angeles and community groups and environmental and environmental justice advocacy
17 organizations fighting for their right to breathe clean air.

18 2. For over a decade, the Port of Los Angeles has allowed one of its tenants—China
19 Shipping (North America) Holding Co., Ltd. (“China Shipping”)—to operate in violation of a
20 host of air quality mitigation measures required to be implemented under a 2008 Environmental
21 Impact Report (the “2008 EIR”). Throughout this time, residents of San Pedro, Wilmington, and
22 Long Beach—including Petitioners/Plaintiffs’ members and their families—have been subjected
23 to the known health risks associated with exposure to harmful air pollutants, including increased
24 risk of asthma, higher risk of cancer, and more recently, higher likelihood of contracting, and
25 developing life-threatening cases of COVID-19.

26 3. In September 2015, the Port of Los Angeles issued a notice of preparation,
27 announcing its intention to prepare a Supplemental Environmental Impact Report for the China
28 Shipping Container Terminal. The purpose of this supplemental environmental review was to
eliminate or modify the mitigation measures contained in the 2008 EIR.

1 adverse effects to human health and the environment caused by the operations of the Port of Los
2 Angeles, and to ensure that the Port is accountable to the public for its duties under state and
3 federal laws, including CEQA.

4 19. Petitioner/Plaintiff San Pedro and Peninsula Homeowners Coalition
5 (“Homeowners Coalition”) is a coalition of homeowners associations in the San Pedro area. The
6 purpose of the Homeowners Coalition is to protect the interests of residents of the San Pedro area.
7 Through its participating organizations, the Homeowners Coalition represents thousands of
8 people, many of whom live near the Port and whose lives are adversely affected by the air
9 pollution and other environmental and health impacts caused by the Port’s operations.

10 20. Petitioner/Plaintiff San Pedro Peninsula Homeowners United, Inc. (“Homeowners
11 United”) is an association of renters and homeowners who live in the San Pedro area, many of
12 whom live adjacent to and near the Port. Homeowners United’s mission is to protect the interests
13 of its members and the community in which its members live. Many of its members live near the
14 Port and are adversely affected by the air pollution and other environmental and health impacts
15 caused by the Port’s operations.

16 21. Petitioner/Plaintiff East Yard Communities for Environmental Justice (EYCEJ) is
17 an environmental health and justice nonprofit organization working towards a safe and healthy
18 environment for communities that are disproportionately suffering the negative impacts of
19 industrial pollution. EYCEJ was established in 2002, and is based out of East Los Angeles,
20 Southeast Los Angeles, and Long Beach, California. EYCEJ recognizes and promotes full and
21 authentic community participation in making policies that affect them directly, promoting the
22 implementation of Environmental Justice guidelines by local, state, and federal governments and
23 agencies, as well as industry. EYCEJ utilizes research-based information, workshops, and
24 trainings to empower its communities, preparing its constituents to engage in decisionmaking
25 processes that directly impact their health and quality of life.

26 22. Petitioner/Plaintiff Coalition for Clean Air, Inc. (CCA) is a California non-profit
27 corporation. CCA is the only statewide organization exclusively advocating for air quality in
28 California, and has actively participated in proceedings related to the local, state and federal

1 regulatory activities affecting air quality in the region since 1970. CCA’s mission is to protect
2 public health, improve air quality, and prevent climate change. CCA maintains offices in Fresno,
3 Sacramento, and Los Angeles

4 23. Respondent/Defendant City of Los Angeles (the “City”) is an incorporated charter
5 City and a political subdivision of the State of California.

6 24. Respondent/Defendant Port of Los Angeles (the “Port”), also known as the Los
7 Angeles Harbor Department (LAHD), is a department of the City of Los Angeles. The Port is an
8 independent department under the control of the Board of Harbor Commissioners. Operating as a
9 landlord port with more than 200 tenants, the Port is the busiest seaport in the Western
10 Hemisphere, and one of the busiest seaports in the world.

11 25. Respondent/Defendant Los Angeles Board of Harbor Commissioners (BHC)
12 oversees the management and operations of the Port. The five members of the BHC are appointed
13 by the Mayor of Los Angeles and confirmed by the Los Angeles City Council.

14 26. Upon information and belief, Petitioners/Plaintiffs allege that Real Party in Interest
15 China Shipping (North America) Holding Co., Ltd. is a corporation organized and existing under
16 the laws of the State of Delaware and is the project applicant and tenant of the subject property.

17 27. Upon information and belief, Petitioners/Plaintiffs allege that Real Party in Interest
18 Cosco Shipping (North America), Inc. is a corporation organized and existing under the laws of
19 the State of California and is the project applicant and tenant of the subject property. Because the
20 Notice of Determination filed for the Project lists a project applicant’s name as China Cosco
21 Shipping Corporation Limited, Petitioner is also naming that entity as a Real Party in Interest
22 pursuant to Public Resources Code section 21167.6.5(a).

23 28. Upon information and belief, Petitioners/Plaintiffs allege that Real Party in Interest
24 West Basin Container Terminal LLC is a corporation organized and existing under the laws of the
25 State of Delaware and is the project applicant and tenant of the subject property.

26 29. Real Parties in Interest Does 1 to 20 are entities that have an interest in the
27 approval and certification of the 2019 SEIR, but which have not thus far been disclosed to
28 Petitioners/Plaintiffs. The true names and identities of Does 1 to 20 are not known to

1 Petitioners/Plaintiffs at this time. Petitioners/Plaintiffs will amend this Petition to reflect the
2 names of each Doe at the time that Petitioners/Plaintiffs learn of their names.

3 **FACTUAL BACKGROUND**

4 **The Community and Environmental Setting**

5 30. For more than twenty years, the Port of Los Angeles has been the busiest container
6 port in the Western Hemisphere. The Port handles more than 40% of all containerized cargo in
7 the West Coast, and at least 17% of all containerized cargo nationwide.¹ These goods arrive in
8 containers transported by petroleum-burning heavy vessels, are offloaded from ships by diesel-
9 powered cargo handling equipment, and are transported to local distribution centers by diesel
10 trucks and trains.

11 31. The environmental impacts of the Port's operations are substantial. Together with
12 its neighboring Port of Long Beach, the ports are the largest fixed sources of air pollution in the
13 South Coast Air Quality Management District—one of the most polluted air districts in the
14 United States. The South Coast Air Quality Management District includes much of Greater Los
15 Angeles and is home to 17 million people. The Port emits daily more smog and nitrogen oxides
16 (NOx) than all six million cars in the region.²

17 32. The Port's environmental impact is significant not only in isolation, but also when
18 taking into consideration the region's environmental context. The South Coast Air Basin is in
19 non-attainment under the federal Clean Air Act for both fine particulate matter and ozone. The
20 emissions attributable to the Port's operations significantly contribute to these designations.

21 33. Exposure to dangerous air pollutants such as smog and NOx is known to cause and
22 exacerbate a host of illnesses, including asthma and respiratory infections. Diesel particulate
23 matter, emitted in massive amounts by the many ships, trucks, and diesel-powered equipment
24 servicing the Port, is associated with a number of long- and short-term health effects, including
25 decreased lung function and increased susceptibility to infection, and is a known carcinogen in
26

27 _____
28 ¹ *Facts and Figures*, The Port of Los Angeles, <https://www.portoflosangeles.org/business/statistics/facts-and-figures>
(last visited Sept 14, 2020).

² *Clean Port*, SCAQMD, <http://www.aqmd.gov/nav/about/initiatives/clean-port> (last visited Sept 14, 2020).

1 the State of California.³

2 34. The neighboring communities of Wilmington, San Pedro, and Long Beach
3 shoulder the brunt of the impacts caused by the Port's continued and excessive reliance on diesel-
4 powered vehicles and equipment. These communities face the region's highest cancer risk from
5 air pollution and suffer from some of the highest asthma rates across the state. Sensitive groups,
6 including children and the elderly, face an increased risk from these dangerous air pollutants:
7 exposure to air pollution impairs lung function and growth in children, and exacerbates chronic
8 health conditions leading to premature death. And, as recent research shows, long-term exposure
9 to NOx may be one of the most important contributors to COVID-19 fatality.⁴ Further, even small
10 increases in long-term exposure to fine particulate pollution leads to a large increase in the
11 COVID-19 death rate.⁵

12 **The China Shipping Project**

13 35. In 2001, the BHC and the City approved a long-term lease and permit for China
14 Shipping to construct and operate a container Terminal in the Port of Los Angeles. Despite the
15 potential significant adverse environmental and health effects that would come with the
16 construction and operation of this massive undertaking, the Terminal's construction and operation
17 were approved without the environmental impact report required under CEQA.

18 36. Shortly thereafter, four of the Petitioners/Plaintiffs here sued the Port, BHC, and
19 the City, for approving the Terminal's construction and operation in violation of CEQA. In 2002,
20 a three-judge appellate panel agreed with the petitioners, permanently enjoining further
21 construction at the Terminal and ordering the Port to prepare an Environmental Impact Report
22 before allowing the Terminal to reopen. The City's request for rehearing was denied by the Court
23 of Appeal, and the California Supreme Court denied the Port's petition for review.

24 37. In 2003, the parties entered a stipulated judgment, partially lifting the injunction to
25

26 ³ See California Air Resources Board, *Findings of the Scientific Review Panel On The Report on Diesel Exhaust*
(Apr. 22, 1998), <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/dieseltac/de-fnds.htm>.

27 ⁴ Yaron Ogen, *Assessing Nitrogen Oxide (NO₂) Levels as a Contributing Factor to Coronavirus (COVID-19)*
Fatality, SCI. TOTAL ENVIRON (Apr. 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7151460/>.

28 ⁵ Xiao Wu et al., *Exposure to Air Pollution and COVID-19 Mortality in the United States: A Nationwide Cross-*
Sectional Study (April 24, 2020), <https://projects.iq.harvard.edu/covid-pm>.

1 allow the Port to complete construction and operation of the first phase of the China Shipping
2 Terminal while preparing the China Shipping EIR. In exchange, the Port agreed to implement a
3 number of air quality and aesthetic mitigation measures, many of which would be included in the
4 Terminal's eventual EIR. These mitigation measures included requirements for certain cargo
5 handling equipment to be powered by alternative fuels, installation of low-profile cranes to
6 reduce visual impacts, and installation and operation of alternative maritime power (AMP)
7 infrastructure to provide shoreside electrical power for ship hoteling, among other measures.

8 **The 2008 EIR**

9 38. In June 2003, the Port issued a notice of preparation for the China Shipping
10 Terminal, announcing the beginning of the court mandated CEQA review of the Terminal.

11 39. Over the course of several years, the Port engaged with numerous stakeholders—
12 local, state, and federal agencies; industry representatives; environmental organizations; and the
13 broader public—to define the scope of the EIR, identify alternatives, and thoroughly study the
14 Terminal's impacts. Throughout this process, the Port also worked with stakeholders to identify a
15 range of feasible mitigation measures that would allow the Terminal to continue operating while
16 minimizing the associated health and environmental impacts.

17 40. In late 2008, nearly six years after the Court of Appeal ordered the Port to prepare
18 an EIR for the China Shipping Project, the BHC certified the 2008 China Shipping EIR and
19 approved the Terminal.

20 41. The 2008 EIR included 52 common-sense, feasible mitigation measures intended
21 to reduce the impacts of the construction and operation of the China Shipping Terminal. The 2008
22 EIR included phase-in schedules, giving China Shipping, in some cases, up to ten years to come
23 into full compliance with these measures.

24 42. Mitigation measure AQ-9, for example, required China Shipping ships calling at
25 the Terminal to use AMP while hoteling in the Port. AMP provides electric power needed to
26 operate on-ship equipment to docked vessels—power that would otherwise be provided by the
27 vessel's petroleum-burning engines. Under the 2008 EIR, this requirement was to be gradually
28 implemented, requiring only 70% compliance by mid-2005, 90% compliance by 2010, and 100%

1 compliance by 2011. Additionally, this requirement included an exception for circumstances
2 when an AMP-capable berth is unavailable due to utilization by another AMP-capable ship.

3 43. Mitigation measures AQ-15 through AQ-17 required, among other things, diesel-
4 powered cargo-handling equipment at the Terminal to be the cleanest available NOx alternative-
5 fueled engines meeting the U.S. Environmental Protection Agency's (EPA's) Tier-4 standards. In
6 the case of rubber-tired gantry cranes (RTGs), the 2008 EIR required that the Terminal transition
7 to electric models. In all cases, the 2008 EIR allowed a phase-in period of one to six years.

8 44. Mitigation measure AQ-20 required that heavy-duty trucks entering the China
9 Shipping Terminal be fueled by liquified natural gas. As with other such mitigation measures,
10 implementation of this requirement was to be phased-in, requiring 50% compliance by 2012, 70%
11 compliance by 2014, and 100% compliance only after 2018.

12 45. While commenters, including several of the Petitioners/Plaintiffs here, exhorted
13 the Port to require more stringent mitigation measures, they were optimistic that the 2008 EIR
14 was a sign of the Port's desire to rectify its earlier errors and to usher a new chapter of this
15 story—a chapter where the Port would embrace its mandate under the law to “prevent[]
16 environmental damage” and “provid[e] a decent home and satisfying living environment for
17 every Californian,” Cal. Pub. Res. Code § 21000(g), rather than shirk this duty. These hopes, like
18 the commitments made by the Port, were short lived.

19 **The Port Reneges on its 2008 EIR Commitments**

20 46. An article published by the *Los Angeles Times* in 2015 described how, for several
21 years, the Port had been striking closed-door deals with China Shipping to undermine the
22 requirements of the 2008 EIR. Port records obtained by the *Los Angeles Times* through a
23 California Public Records Act request showed that, only a few months after the certification of
24 the 2008 EIR, the Port began granting unlawful exemptions to China Shipping, guaranteeing that
25 it would face no consequences for violating the 2008 EIR's AMP requirements.⁶ Hidden from the
26 public eye and in flagrant violation of CEQA, the Port continued granting these backdoor
27

28 ⁶ Tony Barboza, *The Port of L.A. Rolled Back Measures to Cut Pollution – During its ‘Green’ Expansion*, L.A. TIMES (Dec. 13, 2015), <https://www.latimes.com/local/california/la-me-port-pollution-20151215-story.html>.

1 exemptions until 2014, when state regulators began requiring AMP use. Despite the 2008 EIR's
2 requirement that no less than 90% of all ships calling at the China Shipping Terminal between
3 2005 and 2010 plug into AMP, and 100% after 2011, the annual compliance rate during this time
4 period plummeted to as low as 12%.

5 47. Petitioners/Plaintiffs also became aware of the many mitigation measures that the
6 Port had failed to implement. For example, as later acknowledged by the Port, although
7 mitigation measure AQ-15 required that all yard tractors operated at China Shipping be equipped
8 with the cleanest available NOx alternative-fueled engine meeting EPA Tier 4 standards by the
9 beginning of 2015, none of China Shipping's yard tractors met Tier 4 requirements by that time.
10 Similarly, the Port failed to ensure that China Shipping implement the Tier 4 engine requirements
11 of mitigation measures AQ-16 and AQ-17. Although AQ-17 required that RTGs be electric by
12 2009, not a single electric RTG was placed in operation by 2015. And even though mitigation
13 measure AQ-20 established a gradual implementation schedule for LNG-fueled heavy-duty
14 trucks, only 6% of the truck calls at the China Shipping Terminal were made by LNG trucks in
15 2014, despite the 2008 EIR's requirement that no less than 70% of heavy-duty trucks be LNG-
16 powered by that time.

17 48. As explained in the 2008 EIR, the Port claimed it would make these mitigation
18 measures enforceable by seeking a lease amendment with China Shipping and including the
19 mitigation measures in the amended lease. With a 40-year lease in hand and no legal requirement
20 to negotiate a new lease, however, China Shipping refused to amend its lease. As a result, the Port
21 failed to require implementation of the 2008 EIR mitigation measures as a condition of its lease
22 agreement with China Shipping.

23 **The 2019 SEIR Process**

24 49. In September 2015, the Port issued a notice of preparation, announcing its
25 intention to prepare the 2019 SEIR. The notice half-heartedly acknowledged that the Port had
26 failed to implement 11 of the 2008 EIR's mitigation measures. The purpose of this supplemental
27 environmental review was to eliminate or modify the mitigation measures contained in the 2008
28 EIR.

1 ways that environmental damage can be avoided or significantly reduced,” including by
2 considering alternatives and mitigation measures. Cal. Code Regs. tit. 14, § 15002(a)(2).

3 57. CEQA’s mandate, however, is not merely procedural or informational. Indeed,
4 CEQA *requires* public agencies to avoid or significantly reduce environmental effects whenever
5 feasible by implementing project alternatives and/or mitigation measures. *See* Cal. Pub. Res.
6 Code § 21001(g); Cal. Code Regs. tit. 14, § 15002(a)(3); *Laurel Heights Improvement Ass’n of*
7 *S.F., Inc. v. Regents of the Univ. of Cal.*, 47 Cal. 3d 376, 401 (1988).

8 **FIRST CAUSE OF ACTION**

9 **(Cal. Pub. Res. Code §§ 21168, 21168.5)**

10 **Violation of CEQA – Failure to Define the Proper Baseline**

11 58. Petitioners/Plaintiffs incorporate by reference all preceding allegations.

12 59. At the heart of any EIR is the selection of an appropriate baseline, as the baseline
13 is the point of departure when measuring the significance of a project’s impacts. *See* Cal. Code
14 Regs. tit. 14, § 15125(a). Thus, when preparing an SEIR to evaluate “changes to a project” that
15 “might have a significant environmental impact not previously considered in connection with the
16 project as originally approved,” *Friends of the Coll. of San Mateo Gardens v. San Mateo Cnty.*
17 *Cnty. Coll. Dist.*, 1 Cal. 5th 937, 959 (2016), the proper baseline is one that reflects the
18 environmental impacts that were to occur under the previously approved project. Only in this way
19 can the environmental impacts of a project, as originally approved, and the impacts of a revised
20 project, be compared.

21 60. In the 2019 SEIR, however, the Port selected as its baseline the conditions as they
22 existed in 2008. This baseline, however, does not take into account the many mitigation measures
23 that were required to be implemented in the years after 2008. *See, e.g.*, ¶¶ 42-44, 46-47.

24 61. By selecting a baseline that does not take into account the mitigation measures that
25 were required to be implemented under the 2008 EIR, the 2019 SEIR fails at its core task:
26 comparing the environmental impacts as would have occurred under the 2008 EIR to the impacts
27 that would occur under the 2019 SEIR, depriving “the public and decision makers the most
28 accurate picture practically possible of the project’s likely impacts.” *Neighbors for Smart Rail v.*

1 *Exposition Metro Line Const. Auth.*, 57 Cal. 4th 439, 449 (2013).

2 62. The failure to select a proper baseline prevented the 2019 SEIR from adequately
3 analyzing and disclosing the significant environmental impacts of the Terminal’s operation under
4 the 2019 SEIR. By certifying the 2019 SEIR without an adequate description of the baseline, the
5 Port failed to proceed in the manner required by CEQA, thus committing a prejudicial abuse of
6 discretion.

7 **SECOND CAUSE OF ACTION**

8 **(Cal. Pub. Res. Code §§ 21168, 21168.5)**

9 **Violation of CEQA – Failure to Adequately Disclose and Analyze the Terminal’s Significant**
10 **Environmental Effects**

11 63. Petitioners/Plaintiffs incorporate by reference all preceding allegations.

12 64. CEQA requires that an EIR include a detailed statement setting forth “[a]ll
13 significant effects on the environment of the proposed project.” Cal. Pub. Res. Code §
14 21100(b)(2); *see also id.* §§ 21002.1(a), § 21068 (defining “significant effect on the environment”
15 as “a substantial, or potentially substantial, adverse change in the environment”). The discussion
16 of significant effects “should be prepared with a sufficient degree of analysis to provide
17 decisionmakers with information which enables them to make a decision which intelligently takes
18 account of environmental consequences.” Cal. Code Regs. tit. 14, § 15151.

19 65. In its analysis and discussion of significant environmental effects, the 2019 SEIR
20 assumes that the mitigation measures contained therein will be implemented starting in 2019.
21 There are at least three fundamental errors with this assumption. First, as the Port acknowledged
22 in the 2019 SEIR, China Shipping has a long-term lease agreement with the Port, and the
23 proposed mitigation measures will not be enforceable until China Shipping agrees to sign a lease
24 amendment. Second, as admitted by the Port in the 2019 SEIR, the Port does not know *if* and
25 *when* China Shipping will agree to sign a new lease agreement or lease amendment. Finally, 2019
26 has now passed and the measures that were to start in 2019 still have not been implemented.

27 66. In fact, the record is replete with evidence that China Shipping *will not agree* to a
28 lease amendment—the same way it refused such an amendment when the Port sought to integrate

1 the requirements of the 2008 EIR into the lease.

2 67. It is unreasonable to assume that China Shipping will now agree to a lease
3 amendment that will significantly increase its operating costs when it is under no legal
4 requirement to do so, when it has made no statements suggesting that it would agree to a lease
5 amendment, and when it has refused every request to do so over the past twelve-plus years.

6 68. Because the 2019 SEIR’s analysis and discussion of significant environmental
7 effects relies on the unreasonable assumption that China Shipping will agree to a lease
8 amendment—when the record, history, and common sense business considerations indicate
9 otherwise—the City failed to adequately disclose and analyze the Terminal’s significant
10 environmental effects. As such, in certifying the 2019 SEIR, the City failed to proceed in the
11 manner required by CEQA, committing a prejudicial abuse of discretion.

12 **THIRD CAUSE OF ACTION**

13 **(Cal. Pub. Res. Code §§ 21168, 21168.5)**

14 **Violation of CEQA – Failure to Provide a Complete and Coherent Explanation of**
15 **Conclusions**

16 69. Petitioners/Plaintiffs incorporate by reference all preceding allegations.

17 70. CEQA requires that every EIR “[i]nform governmental decision makers and the
18 public about the potential, significant environmental effects of proposed activities.” Cal. Code
19 Regs. tit. 14, § 15002. To do so, an EIR must contain an “analytically complete and coherent
20 explanation” of its conclusions. *Vineyard Area Citizens for Responsible Growth v. City of Rancho*
21 *Cordova*, 40 Cal.4th 412, 440 (2007).

22 71. The 2019 SEIR significantly modifies, and in some cases eliminates, 11 mitigation
23 measures that were deemed feasible when the 2008 EIR was adopted. These include mitigation
24 measures AQ-9 (Alternative Maritime Power), AQ-10 (Vessel Speed Reduction Program), AQ-
25 15 (Yard Tractors at Berth 97-109 Terminal), AQ-16 (Yard Equipment at Berth 121-131 Rail
26 Yard), AQ-17 (Yard Equipment at Berth 97-109 Terminal), AQ-20 (LNG Trucks), and AQ-23
27 (Throughput Tracking).

28 72. An agency cannot delete or modify a mitigation measure adopted in a previous

1 EIR without a showing, supported by substantial evidence, that the mitigation measure is
2 infeasible. *Napa Citizens for Honest Gov't v. Napa Cnty. Bd. of Supervisors*, 91 Cal. App. 4th
3 342, 359 (2001). The 2019 SEIR fails to provide enough information—let alone the “substantial
4 evidence” required by law—for the Port to meet its burden to show infeasibility.

5 73. For example, the 2019 SEIR makes unsubstantiated claims of technological,
6 operational, and economic infeasibility. Yet, none of these allegations hold water. The 2019 SEIR
7 fails to explain how it is technologically infeasible to require the use of equipment that is readily
8 available for acquisition—for example, zero-emission RTGs—or how requiring such measures is
9 operationally infeasible when similarly situated terminals are applying the same measures. And
10 although the 2019 SEIR is peppered with dollar figures showing the cost of implementing these
11 mitigation measures, the 2019 SEIR utterly fails to provide any information suggesting that
12 requiring these mitigation measures would be so ruinous as to render the project impracticable to
13 proceed with. *See Citizens of Goleta Valley v. Bd. of Supervisors*, 197 Cal. App. 3d 1167, 1181
14 (1988).

15 74. By eliminating previously approved mitigation measures without providing
16 substantial evidence that these mitigation measures are now infeasible, the Port failed to provide
17 an “analytically complete and coherent explanation” of its conclusions. *See Vineyard Area*
18 *Citizens for Responsible Growth*, 40 Cal.4th at 440. Thus, by certifying a SEIR that does not
19 provide the information upon which its conclusions are based, the City failed to proceed in the
20 manner required by CEQA, committing a prejudicial abuse of discretion.

21 **FOURTH CAUSE OF ACTION**

22 **(Cal. Pub. Res. Code §§ 21168, 21168.5)**

23 **Violation of CEQA – Failure to Require Feasible Mitigation Measures to Minimize** 24 **Significant Environmental Effects**

25 75. Petitioners/Plaintiffs incorporate by reference all preceding allegations.

26 76. The Legislature’s mandate is unequivocal: under CEQA, a lead agency “should
27 not approve projects as proposed if there are feasible alternatives or feasible mitigation measures
28 available which would substantially lessen the significant environmental effects of such projects.”

1 Cal. Pub. Res. Code §§ 21002, 21081.

2 77. The 2019 SEIR fails to analyze and adopt all feasible mitigation measures
3 available that would minimize the Revised Project's significant environmental effects.

4 78. For example, the 2019 SEIR's mitigation measure AQ-9 (Alternative Maritime
5 Power) would require that at least 95% of the ships calling at the China Shipping Terminal use
6 AMP while hoteling in the Port, with exceptions for certain enumerated circumstances. However,
7 as the 2019 SEIR shows, China Shipping has been able to achieve 99% compliance in the past.
8 By setting an arbitrary compliance rate of 95 percent—a rate lower than the compliance rates
9 China Shipping's past operations confirm to be feasible—the 2019 SEIR fails to consider all
10 feasible mitigation measures, and in turn fails to minimize the Terminal's significant
11 environmental effects.

12 79. Similarly, the 2019 SEIR's mitigation measure AQ-10 (Vessel Speed Reduction
13 Program) would require that at least 95% of vessels calling at the China Shipping Terminal
14 comply with the expanded Vessel Speed Reduction Program of 12 knots between 40 nautical
15 miles from Point Fermin and the Precautionary Area. However, as shown in the 2019 SEIR, the
16 Port has demonstrated that it can achieve 99% compliance at the Terminal. Here, again, the 2019
17 SEIR fails to consider all feasible mitigation measures, and in turn fails to minimize the
18 Terminal's significant environmental effects.

19 80. The 2019 SEIR also fails to consider all feasible measures to minimize the
20 significant environmental impacts of the yard tractors and cargo-handling equipment servicing the
21 Terminal. The 2019 SEIR's mitigation measures AQ-15, AQ-16, and AQ-17 set forth a drawn-
22 out implementation plan that gives China Shipping, in some cases, no less than seven additional
23 years to transition its cargo-handling fleet to the types of equipment that were required to be
24 implemented many years ago under the 2008 EIR. For example, while the 2008 EIR required
25 China Shipping to implement fully electric RTGs by 2009, the 2019 SEIR gives China Shipping
26 until seven years after the effective date of a new lease to do so. Even assuming the unlikely
27 occurrence of a new lease, the 2019 SEIR would not require the use of electric RTGs until at least
28 2027—eighteen years after these cranes were required to be replaced under the 2008 EIR.

1 certifying the 2019 SEIR and approving the Revised Project; and

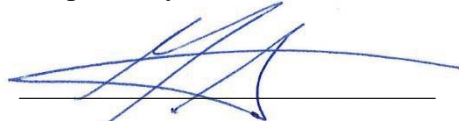
2 3. For fees and costs incurred in relation to the prosecution of this action, including
3 reasonable attorney's fees as authorized by Code of Civil Procedure section 1021.5 and any other
4 applicable law;

5 4. For temporary, preliminary, and permanent injunctive relief to protect
6 Petitioners/Plaintiffs' rights under CEQA; and

7 5. Any and all such other equitable or legal relief that the Court considers just and
8 proper.

9
10 Date: September 16, 2020

Respectfully submitted,

11
12 

13 Gonzalo E. Rodriguez Gonzalez, CSBN 322913
14 Natural Resources Defense Council, Inc.
15 111 Sutter Street, Fl. 21
16 San Francisco, CA 94104
17 Telephone: (405) 875-6110
18 Email: grodriguez@nrdc.org

19 Claire Woods, CSBN 282348
20 David Pettit, CSBN 67128
21 Melissa Lin Perrella, CSBN 205019
22 Natural Resources Defense Council, Inc.
23 1314 Second Street
24 Santa Monica, CA 90401
25 Telephone: (310) 434-2300
26 Email: cwoods@nrdc.org, dpettit@nrdc.org,
27 mperrella@nrdc.org

28 *Attorneys for Petitioners/Plaintiffs*

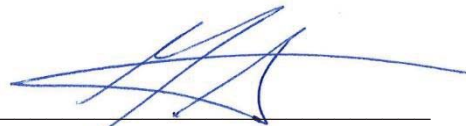
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VERIFICATION

I, Gonzalo E. Rodriguez Gonzalez, declare as follows:

I am the Attorney for the Petitioners/Plaintiffs in this matter. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the Petition of Writ of Mandate are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on the 16 day of September, 2020 in San Francisco, CA.



Gonzalo E. Rodriguez Gonzalez
Attorney for Plaintiffs/Petitioners

EXHIBIT A



City of Los Angeles
200 N. Spring St.
Los Angeles, CA 90012
Fax: 213-978-8312

Los Angeles City Council
200 N. Spring St., Suite 360
Los Angeles, CA 90012
Fax: 213-978-8211

Los Angeles Board of Harbor Commissioners
425 South Palos Verdes St.
San Pedro, CA 90731
Fax: 310-831-9778

Port of Los Angeles
425 South Palos Verdes St.
San Pedro, CA 90731
Fax: 310-831-9778

September 16, 2020

Re: Notice of Commencement of CEQA Litigation Challenging the Certification of the China Shipping 2019 Supplemental Environmental Impact Report and Revised Project

Dear Sir/Madam:

This letter is to notify you that the Natural Resources Defense Council, Inc., San Pedro and Peninsula Homeowners Coalition, San Pedro Peninsula Homeowners United, Inc., East Yard Communities for Environmental Justice, and Coalition for Clean Air, Inc., intend to file suit against the City of Los Angeles, Los Angeles Board of Harbor Commissioners, and the Port of

NATURAL RESOURCES DEFENSE COUNCIL

111 SUTTER STREET | FLOOR 21 | SAN FRANCISCO, CA | 94104 | T 415.875.6100 | NRDC.ORG

Los Angeles for failing to comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in certifying the China Shipping 2019 Supplemental Environmental Impact Report and approving the Revised Project. This notice is given pursuant to Public Resources Code section 21167.5.

Yours truly,



Gonzalo E. Rodriguez
Natural Resources Defense Council



Melissa Lin Perrella
Natural Resources Defense Council



Claire Woods
Natural Resources Defense Council



David Pettit
Natural Resources Defense Council

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

PROOF OF SERVICE

I, Gonzalo E. Rodriguez Gonzalez, declare that I am over the age of 18 and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is: 111 Sutter St. Fl. 21, San Francisco, California, which is located in the county where the mailing described below occurred. On September 16, 2020, I served true copies of the following document(s) described as:

- **Notice of Commencement of CEQA Litigation Challenging the Certification of the China Shipping 2019 Supplemental Environmental Impact Report and Revised Project**
- **Notice Re: Preparation of Record of Administrative Proceedings**

I deposited such envelope in the mail at San Francisco, California. The envelope was addressed as set forth below, and mailed with postage thereon fully prepaid. I am “readily familiar” with the organization’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

City of Los Angeles
200 N. Spring St.
Los Angeles, CA 90012

Los Angeles City Council
200 N. Spring St., Suite 360
Los Angeles, CA 90012

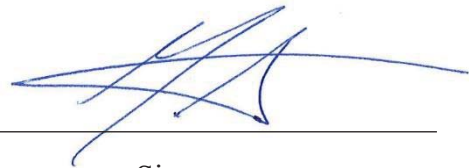
Los Angeles Board of Harbor Commissioners
425 South Palos Verdes St.
San Pedro, CA 90731

Port of Los Angeles
425 South Palos Verdes St.
San Pedro, CA 90731

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 16, 2020, at San Francisco, California.

Gonzalo E. Rodriguez Gonzalez

Printed Name



Signature

EXHIBIT B

NRDC

Xavier Becerra
Attorney General of the State of California
1300 I Street
Sacramento, CA 95814

September 16, 2020

Re: Notice of Commencement of CEQA Litigation:
Natural Resources Defense Council et al. v. City of Los Angeles et al.

Dear Attorney General Becerra:

Enclosed please find a copy of the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the above-entitled action. The Petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt of this letter.

Yours truly,



Gonzalo E. Rodriguez
Natural Resources Defense Council



Melissa Lin Perrella
Natural Resources Defense Council



Claire Woods
Natural Resources Defense Council



David Pettit
Natural Resources Defense Council

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

NATURAL RESOURCES DEFENSE COUNCIL

111 SUTTER STREET | FLOOR 21 | SAN FRANCISCO, CA | 94104 | T 415.875.6100 | NRDC.ORG

PROOF OF SERVICE

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- **Notice of Commencement of CEQA Litigation: Natural Resources Defense Council et al. v. City of Los Angeles et al.**
- **Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief**

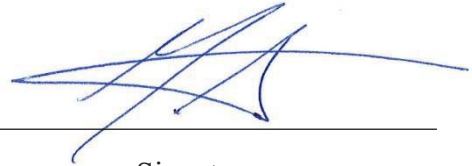
I deposited such envelope in the mail at San Francisco, California. The envelope was addressed as set forth below, and mailed with postage thereon fully prepaid. I am “readily familiar” with the organization’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

Office of the Attorney General
1515 Clay Street
Oakland, CA 94612-0550

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 16, 2020, at San Francisco, California.

Gonzalo E. Rodriguez Gonzalez

Printed Name



Signature

EXHIBIT C

1 Claire Woods, CSBN 282348
David Pettit, CSBN 67128
2 Melissa Lin Perrella, CSBN 205019
Natural Resources Defense Council, Inc.
3 1314 Second Street
4 Santa Monica, CA 90401
Telephone: (310) 434-2300
5 Email: cwoods@nrdc.org, dpettit@nrdc.org,
mlinperrella@nrdc.org
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7 Gonzalo E. Rodriguez Gonzalez, CSBN 322913
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8 111 Sutter Street, Fl. 21
San Francisco, CA 94104
9 Telephone: (405) 875-6110
Email: grodriguez@nrdc.org
10

11 *Attorneys for Petitioners/Plaintiffs*

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
14

15 NATURAL RESOURCES DEFENSE
COUNCIL, INC., SAN PEDRO AND
16 PENINSULA HOMEOWNERS
COALITION, SAN PEDRO PENINSULA
17 HOMEOWNERS UNITED, INC., EAST
YARD COMMUNITIES FOR
18 ENVIRONMENTAL JUSTICE, and
COALITION FOR CLEAN AIR, INC., non-
19 profit corporations

20 Petitioners/Plaintiffs,

21 v.

22 CITY OF LOS ANGELES, PORT OF LOS
ANGELES, LOS ANGELES BOARD OF
23 ANGELES, and LOS ANGELES BOARD OF
HARBOR COMMISSIONERS, public
24 entities

25 Respondents/Defendants.
26

27 CHINA SHIPPING (NORTH AMERICA)
HOLDING CO., LTD, a Delaware
corporation; CHINA COSCO SHIPPING
28 CORPORATION LIMITED, a corporation;

Case No.

**NOTICE RE: PREPARATION OF
RECORD OF ADMINISTRATIVE
PROCEEDINGS**

1 COSCO SHIPPING (NORTH AMERICA),
2 INC., a California corporation; WEST BASIN
3 CONTAINER TERMINAL LLC, a Delaware
4 corporation; and DOES 1 THROUGH 20,
inclusive,

Real Parties in Interest.

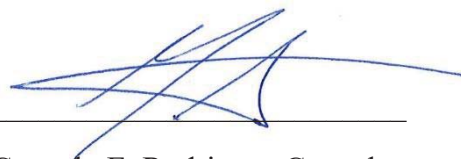
5 TO THE CITY OF LOS ANGELES:

6 PLEASE TAKE NOTICE that, pursuant to Public Resources Code section 21167.6(a),
7 Petitioners/Plaintiffs Natural Resources Defense Council, San Pedro and Peninsula Homeowners
8 Coalition, San Pedro Peninsula Homeowners United, Inc., East Yard Communities For
9 Environmental Justice, and Coalition for Clean Air request that Respondents/Defendants City of
10 Los Angeles, Los Angeles Board of Harbor Commissioners, and Port of Los Angeles certify the
11 record of administrative proceedings before it concerning the Board of Harbor Commissioners'
12 October 8, 2019 certification of the China Shipping 2019 SEIR and approval of the Revised
13 Project, and the August 12, 2020 decision of the Los Angeles City Council to deny
14 Petitioners/Plaintiffs' appeal of the BHC's decision.

15 Pursuant to Public Resources Code section 21167.6(b)(2) and Los Angeles County
16 Superior Court Local Rule 3.232(d)(2)(i), Petitioners/Plaintiffs hereby notify
17 Respondents/Defendants that they are considering electing to prepare the record of administrative
18 proceedings, subject to certification by Respondents/Defendants. Pursuant to Local Rule
19 3.232(d)(1)-(2), Petitioners/Plaintiffs will make their final determination about whether to elect to
20 prepare the record after receiving Respondents/Defendants' preliminary notification of the
21 estimated cost, estimated range for the number of pages, customary charge for copying per page,
22 and any other estimated reasonable costs that will be charged for a copy of the record.

23
24 Date: September 16, 2020

Respectfully submitted,

25
26 

27 Gonzalo E. Rodriguez Gonzalez

28 *Attorney for Petitioners/Plaintiffs*

PROOF OF SERVICE

I, Gonzalo E. Rodriguez Gonzalez, declare that I am over the age of 18 and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is: 111 Sutter St. Fl. 21, San Francisco, California, which is located in the county where the mailing described below occurred. On September 16, 2020, I served true copies of the following document(s) described as:

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Los Angeles, CA 90012

Los Angeles City Council
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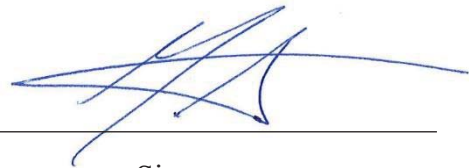
Los Angeles Board of Harbor Commissioners
425 South Palos Verdes St.
San Pedro, CA 90731

Port of Los Angeles
425 South Palos Verdes St.
San Pedro, CA 90731

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 16, 2020, at San Francisco, California.

Gonzalo E. Rodriguez Gonzalez

Printed Name



Signature