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**Exempt from Filing Fees pursuant to  
Government Code section 6103**

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

13 **SOUTH COAST AIR QUALITY  
14 MANAGEMENT DISTRICT, a Public  
Entity,**

15 Petitioner,

16 v.

17 **CITY OF LOS ANGELES, a Public Entity;  
18 LOS ANGELES CITY COUNCIL, a Public  
Entity; the CITY OF LOS ANGELES  
19 HARBOR DEPARTMENT, a Public Entity;  
and the LOS ANGELES BOARD OF  
20 HARBOR COMMISSIONERS, a Public  
Entity,**

21 Respondents.

22 **CHINA SHIPPING (NORTH AMERICA)  
23 HOLDING CO. LTD, a Delaware  
corporation; COSCO SHIPPING (NORTH  
24 AMERICA), INC., a California corporation;  
WEST BASIN CONTAINER TERMINAL  
25 LLC, a Delaware corporation; CHINA  
COSCO SHIPPING CORPORATION  
26 LIMITED, a corporation; and DOES 1  
THROUGH 50, inclusive,**

27 Real Parties in Interest.  
28

Case No. 20STCP02985

**NOTICE OF MOTION AND JOINT  
MOTION FOR LEAVE TO  
INTERVENE; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATIONS OF LANI M.  
MAHER AND MATTHEW W.  
CHRISTEN IN SUPPORT THEREOF**

[Code Civ. Proc., §§ 387, 1085, 1094.5;  
Gov. Code, § 12606; Pub. Resources  
Code, § 21167]

**ACTION BASED ON THE  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT (CEQA)**

Date: December 10, 2020  
Time: 9:00 a.m.  
Dept: G  
Judge: Honorable John A. Torribio  
Action Filed: September 16, 2020

1           **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2           **PLEASE TAKE NOTICE** that on December 10, 2020, at 9:00 a.m., in Department G of  
3 the Los Angeles County Superior Court’s Norwalk Courthouse, located at 12720 Norwalk Blvd.,  
4 Norwalk, CA 90650, the People of the State of California *ex rel.* Xavier Becerra, Attorney  
5 General (the “People”), and the California Air Resources Board (“CARB”) will move, and hereby  
6 do move the Court for leave to intervene in the above-captioned action filed by the South Coast  
7 Air Quality Management District (“SCAQMD”), Case Number 20STCP02985, pursuant to Code  
8 of Civil Procedure section 387, subdivision (d). The People’s and CARB’s proposed Joint  
9 Petition for Writ of Mandate in Intervention (“Joint Petition in Intervention”) is attached to this  
10 motion as Exhibit 1. The Joint Petition in Intervention challenges the revised Berths 97-109  
11 China Shipping Container Terminal project (“Project”) approved by Respondents the City of Los  
12 Angeles, the Los Angeles City Council, the Los Angeles Harbor Department, and the Los  
13 Angeles Board of Harbor Commissioners (collectively, “Respondents”) under the California  
14 Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.).

15           The People’s and CARB’s Joint Motion to Intervene (“Joint Motion”) is based on the  
16 following grounds:

- 17           1.       This motion is timely and will not impair or impede the prompt resolution of the  
18 issues presented in this action.
- 19           2.       Under Government Code section 12606, the People, as represented by the  
20 Attorney General, have an unconditional right to intervene in any judicial or administrative  
21 proceeding in which facts are alleged concerning pollution or adverse environmental effects that  
22 could affect the public in general. Such facts are alleged in SCAQMD’s lawsuit pending before  
23 this Court. Accordingly, the Court should grant the People leave to intervene in this action  
24 pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(A).
- 25           3.       CARB is also entitled to intervene as a matter of right because it has an interest  
26 relating to the property or transaction that is the subject of the action, the disposition of this case  
27 may impair or impede that interest, and CARB’s interests are not adequately represented by the  
28 original parties to this action. (Code Civ. Proc., § 387, subd. (d)(1)(B).)

1           4.       Alternatively, the Court should grant CARB permissive intervention because it has  
2 a direct interest in this action, CARB’s intervention will not enlarge the issues in the litigation,  
3 and the reasons for CARB’s intervention outweigh any opposition by the original parties. (Code  
4 Civ. Proc., § 387, subd. (d)(2); *People v. ex rel. Rominger v. County of Trinity* (1983) 147  
5 Cal.App.3d 655, 660-61.)

6           The Joint Motion is based upon this Notice, the Joint Petition in Intervention, the  
7 accompanying Memorandum of Points and Authorities, the Declarations of Lani M. Maher and  
8 Matthew W. Christen in support of the Joint Motion, any matters of which this Court may take  
9 judicial notice, the pleadings on file with the Court in this action, and such other matters which  
10 may be brought to the attention of this Court before or during the hearing on the Joint Motion.

11  
12 Dated: November 4, 2020

Respectfully Submitted,

13  
14 XAVIER BECERRA  
15 Attorney General of California  
16 SARAH E. MORRISON  
17 GARY E. TAVETIAN  
18 Supervising Deputy Attorneys General  
19 TATIANA K. GAUR  
20 ADAM L. LEVITAN  
21 Deputy Attorneys General

22  
23 /s/ Lani M. Maher  
24 LANI M. MAHER  
25 Deputy Attorney General

26  
27 *Attorneys for the People of the State of*  
28 *California and the California Air Resources*  
*Board*

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                                    **JOINT MOTION FOR LEAVE TO INTERVENE**

3                                    **INTRODUCTION**

4                                    Pursuant to Code of Civil Procedure section 387, subdivision (d), the People of the State  
5 of California *ex rel.* Xavier Becerra, Attorney General (the “People”), and the California Air  
6 Resources Board (“CARB”) move this court for an order granting the People and CARB leave to  
7 intervene in Case Number 20STCP02985 on the side of the South Coast Air Quality Management  
8 District (“SCAQMD”). The People’s and CARB’s proposed Joint Petition for Writ of Mandate in  
9 Intervention (“Joint Petition in Intervention”) is attached hereto as Exhibit 1.

10                                    The People have an unconditional right to intervene in actions in which facts are alleged  
11 concerning pollution and adverse environmental effects that could affect the public in general.  
12 (Gov. Code, § 12606.) SCAQMD alleges that Respondents the City of Los Angeles, the Los  
13 Angeles City Council, the Los Angeles Harbor Department, and the Los Angeles Board of Harbor  
14 Commissioners (collectively, “Respondents”) approved the revised Berths 97-109, China  
15 Shipping Container Terminal project (“Project”) without fully complying with the requirements  
16 of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, et  
17 seq., resulting in significant harmful air quality impacts in the nearby communities and other  
18 adverse environmental effects. Therefore, the People should be granted leave to intervene in this  
19 action and to file the Joint Petition in Intervention.

20                                    CARB is also entitled to intervene as a matter of right because it has an interest relating to  
21 Respondents’ approval of the Project, the disposition of this action may impair or impede that  
22 interest, and CARB’s interests are not adequately represented by the original parties. (Code Civ.  
23 Proc., § 387, subd. (d)(1)(B).) Alternatively, CARB should be permitted to intervene because it  
24 has a direct interest in this litigation, CARB’s claims will not enlarge the issues, and any  
25 opposition by the original parties is outweighed by CARB’s reasons for intervening. (Code Civ.  
26 Proc., § 387, subd. (d)(2); *People v. ex rel. Rominger v. County of Trinity* (1983) 147 Cal.App.3d  
27 655, 660-61.)

1 The People and CARB move to intervene to ensure Respondents disclose and mitigate the  
2 significant adverse environmental impacts of the Project and ensure all adopted measures are  
3 fully enforceable, as required by CEQA. The Court should grant this motion.

#### 4 **STATEMENT OF ALLEGED FACTS**

5 On or about September 16, 2020, Petitioner SCAQMD filed a Petition for Writ of  
6 Mandate and Complaint for Declaratory Relief against Respondents in Los Angeles County  
7 Superior Court, Case Number 20STCP02985 (“SCAQMD Petition”). The SCAQMD Petition  
8 alleges that Respondents violated CEQA by approving the Project and certifying the related  
9 environmental impact report. (SCAQMD Petition, ¶ 7.) The Project is located at the Port of Los  
10 Angeles, in close proximity to low income communities and communities of color that are  
11 exposed to disproportionately high amounts of air pollution, including the communities of  
12 Wilmington, Carson, and West Long Beach. (SCAQMD Petition, ¶ 71.)

13 Specifically, the SCAQMD Petition alleges that the Project’s environmental impact report  
14 violates CEQA by, *inter alia*: using an improper baseline; relying on an inadequate and  
15 misleading project description; failing to adequately evaluate the Project’s significant adverse  
16 environmental impacts; adopting unenforceable mitigation measures; relying on an inadequate  
17 mitigation monitoring and reporting program; failing to adopt all feasible mitigation measures;  
18 failing to support Respondents’ findings and statement of overriding considerations with  
19 substantial evidence; and failing to adequately respond to public comments. (SCAQMD Petition,  
20 ¶¶ 78-127.) The SCAQMD Petition also alleges that Respondents failed to enforce the  
21 implementation of mitigation measures adopted under the environmental impact report for a  
22 container terminal project previously approved by Respondents. (SCAQMD Petition, ¶¶ 74-77.)

#### 23 **ARGUMENT**

##### 24 **I. THE PEOPLE AND CARB ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT**

25 Code of Civil Procedure section 387, subdivision (d)(1)(A), provides that a nonparty may  
26 intervene as a matter of right upon timely application when a provision of law confers an  
27 unconditional right to intervene. The People, through the Attorney General, have a statutory right  
28

1 to intervene in this action pursuant to Government Code section 12606 because the action  
2 “concern[s] pollution or adverse environmental effects which could affect the public generally.”

3 Code of Civil Procedure section 387, subdivision (d)(1)(B), provides that a nonparty may  
4 also intervene as a matter of right upon timely application when (1) the proposed intervenor has  
5 an interest relating to the property or transaction that is the subject of the action; (2) the  
6 disposition of the case may as a practical matter impair or impede the proposed intervenor’s  
7 ability to protect that interest; and (3) the proposed intervenor’s interests are not adequately  
8 represented by the existing parties. (See also, *Reliance Ins. Co. v. Superior Court* (2000) 84  
9 Cal.App.4th 383, 386.) CARB satisfies each of these requirements and therefore is entitled to  
10 intervene in this action.

11 **A. Intervention Is Timely**

12 There is no statutory time limit for filing a motion to intervene. (*Noya v. A.W. Coulter*  
13 *Trucking* (2006) 143 Cal.App.4th 838, 842.) Rather, “it is the general rule that a right to  
14 intervene should be asserted within a reasonable time and that the intervenor must not be guilty of  
15 an unreasonable delay after knowledge of the suit.” (*Allen v. California Water & Tel. Co.* (1947)  
16 31 Cal.2d 104, 108.) Intervention is timely unless any party opposing intervention can show  
17 prejudice from any delay attributable to the filing of a motion to intervene. (*Truck Ins. Exchange*  
18 *v. Superior Court* (1997) 60 Cal.App.4th 342, 351 [motion to intervene filed in lawsuit pending  
19 for four years was timely because real parties had shown no prejudice “other than being required  
20 to prove their case.”].)

21 The People’s and CARB’s joint intervention motion is timely. SCAQMD notified the  
22 California Attorney General’s Office of its Petition in September 2020, in compliance with Public  
23 Resources Code section 21167.7. (Declaration of Lani M. Maher in Support of Joint Motion for  
24 Leave to Intervene (“Maher Decl.”), ¶ 4.) SCAQMD also notified CARB of its Petition in  
25 September 2020 as a courtesy. (Declaration of Matthew W. Christen in Support of Joint Motion  
26 for Leave to Intervene (“Christen Decl.”), ¶ 8.) As of this filing, less than two months have  
27 passed since commencement of this action, which is still in an early phase. The deadline to  
28 certify the administrative record in this action has not yet been set and the first status conference

1 is scheduled on November 23, 2020. (Maher Decl., ¶ 5.) Neither a briefing schedule nor the date  
2 for a hearing on the SCAQMD Petition has been set in this matter. (*Id.*) Since receiving notice of  
3 the SCAQMD Petition, the People and CARB have spent considerable time and effort reviewing  
4 the petition and the related environmental disclosures for the Project; evaluating and seeking to  
5 verify the factual and legal allegations in the petition, communicating with the parties to fully  
6 understand the arguments on both sides, and preparing pleadings seeking to intervene in the  
7 action. (Maher Decl., ¶ 6; Christen Decl., ¶ 9.) Accordingly, the People and CARB have asserted  
8 their right to intervene within a reasonable time and without unreasonable delay, and their  
9 intervention will not prejudice the original parties.

10 **B. Government Code Section 12606 Confers on the People, Through the**  
11 **Attorney General, an Unconditional Right to Intervene**

12 Code of Civil Procedure section 387, subdivision (d)(1)(A), provides the standard for  
13 intervention as a matter of right: If “[a] provision of law confers an unconditional right to  
14 intervene . . . [t]he court shall, upon timely application, permit a nonparty to intervene in the  
15 action or proceeding[.]”

16 The People, through the Attorney General, have an unconditional right to intervene in the  
17 current action pursuant to Government Code section 12606, which provides that “[t]he Attorney  
18 General *shall* be permitted to intervene in any judicial or administrative proceeding in which facts  
19 are alleged concerning pollution or adverse environmental effects which could affect the public  
20 generally.” (Emphasis added.) Government Code section 12606 is to be read in conjunction with  
21 Code of Civil Procedure section 388, which requires service of all pleadings alleging pollution or  
22 adverse environmental effects which could affect the public generally on the Attorney General  
23 and Public Resources Code section 21167.7, which similarly requires service of all CEQA  
24 pleadings on the Attorney General. These service requirements have the effect of informing the  
25 Attorney General’s office of actions alleging environmental damage and “permit[] the Attorney  
26 General to lend its power, prestige and resources to secure compliance with CEQA and other  
27 environmental laws[.]” (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 561.) It is  
28

1 well established that “the Attorney General can intervene in an action to enforce compliance with  
2 CEQA.” (*Id.* at 556, n. 7.)

3 As noted above, SCAQMD’s Petition alleges that Respondents violated several  
4 requirements of CEQA and that those violations will result in significant adverse air quality  
5 impacts. Accordingly, Petitioner’s action constitutes a “judicial . . . proceeding in which facts are  
6 alleged concerning pollution or adverse environmental effects which could affect the public  
7 generally.” (See Gov. Code, § 12606.) The Attorney General, on behalf of the People, therefore  
8 has an unconditional right to intervene.

9 **C. CARB Has a Right to Intervene to Protect Its Interests**

10 CARB may intervene as a matter of right under Code of Civil Procedure section 387,  
11 subdivision (d)(1)(B), because: (1) CARB has an interest relating to the property or transaction  
12 that is the subject of the action; (2) the disposition of this case may impair or impede CARB’s  
13 ability to protect that interest; and (3) CARB’s interests are not adequately represented by the  
14 existing parties.

15 **1. CARB Has an Interest in the City’s Approval of the Project**

16 CARB, as the clean air agency of the State of California, has a significant regulatory  
17 interest in the air quality impacts of the Project and other projects at marine ports throughout the  
18 state. CARB has been actively engaged in incentive-related and regulatory efforts to address new  
19 and existing emissions from freight-related activities at ports in California for decades. (Christen  
20 Decl., ¶ 3.) These emissions include criteria air pollutants and toxic air contaminants such as  
21 nitrogen oxides (“NOx”) and diesel particulate matter (“DPM”), which have been linked to an  
22 increased risk of adverse health effects. (*Id.*) While SCAQMD has jurisdiction over stationary  
23 sources of air pollution, only CARB has primary statutory jurisdiction to regulate air pollutant  
24 emissions from mobile sources, including sources associated with the Revised Project that are  
25 directly at issue in this action. (Christen Decl., ¶ 6; Health & Saf. Code, §§ 36950- 36975, 39500,  
26 39607.1, 40000-40006, 40920.6, 40920.8, 42400, 42402, 42411, 42705.5, 44391.2.) Through  
27 such regulation, CARB works to protect public health and reduce air quality impacts throughout  
28 the state.



1           The Legislature tasked CARB with implementing Assembly Bill 617 (“AB 617”) (C.  
2 Garcia, Chap. 136, Stat. 2017), which requires specific emission reduction protections for  
3 environmental justice communities identified as disadvantaged communities. (Christen Decl., ¶  
4 4.) Pursuant to AB 617, CARB identified the Wilmington, Carson, West Long Beach  
5 community, which borders the Port of Los Angeles, as one such community. (*Id.*) In September  
6 2020, CARB approved a Community Emissions Reduction Plan (“CERP”) prepared by  
7 SCAQMD for the Wilmington, Carson, West Long Beach community, which includes several  
8 measures to reduce emissions from the Port of Los Angeles and from freight traffic traveling  
9 through the community to access the Port. (*Id.*) Also in September 2020, Governor Newsom  
10 ordered CARB to develop and propose regulations and strategies aimed at achieving the phased  
11 in use of zero-emissions drayage trucks and off-road vehicles and equipment. (Christen Decl., ¶  
12 5; Governor’s Exec. Order No. N-79-20 (Sep. 23, 2020).)

13           Because CARB has regulatory and statutory responsibilities related to reducing air  
14 emissions from mobile sources associated with shipping operations at ports, and has the expertise  
15 and knowledge to protect neighboring communities from harmful air pollution, CARB has an  
16 interest in Respondents’ approval of the Project and should be granted intervention as a matter of  
17 right.

## 18           **2. The Disposition of this Case May Affect CARB’s Interests**

19           CARB should also be granted leave to intervene as a matter of right because the disposition  
20 of this case may impair or impede CARB’s interests. Because the Wilmington, Carson, West  
21 Long Beach CERP is largely directed at reducing mobile source emissions from port-related  
22 activities, any final judgment upholding the Project will impact CARB’s ability under the CERP  
23 to protect the Wilmington, Carson, West Long Beach community and other disadvantaged  
24 communities from harmful air emissions produced by mobile source operations at the Ports of  
25 Los Angeles and Long Beach. The Court’s final disposition regarding the feasibility of  
26 implementing zero-emissions mobile source technology as part of the Project could also have  
27 wide-ranging impacts on CARB’s ability to meet the Governor’s emission reduction goals set  
28 forth in Executive Order N-79-20. Finally, the disposition of this action could affect CARB’s

1 ongoing emission reduction efforts in and around the ports, as the Project’s significant adverse air  
2 quality impacts will undermine these efforts if the Project approval and environmental impact  
3 statement are upheld. Therefore, the final disposition of this case may impair or impede CARB’s  
4 direct interests.

5 **3. CARB’s Interests Are Not Adequately Represented By Existing**  
6 **Parties**

7 As stated above, CARB has an interest in the outcome of this action as the entity charged  
8 with protecting the public health of AB 617 communities throughout the state, achieving regional  
9 and statewide emissions reduction goals through planning, incentive programs, and regulatory  
10 efforts, and expediting the transition to zero-emissions mobile source technology statewide.  
11 Although some of the existing parties have overlapping concerns or obligations, none can  
12 adequately represent CARB in its unique statutory role as the state’s foremost expert on air  
13 quality and regulator of air pollution from mobile sources, especially since SCAQMD has no  
14 authority to regulate mobile sources, as noted above. CARB has been tasked by the State of  
15 California to protect air quality for all Californians, with a focus on disadvantaged communities,  
16 and to advocate for the benefits of statewide emissions reductions. (Christen Decl., ¶¶ 2-5.) It is  
17 uniquely positioned to ensure that complex technical and policy issues relevant on the statewide  
18 level are considered and addressed in this litigation. No existing party can stand in CARB’s  
19 shoes and protect its interests. Accordingly, CARB is entitled to intervene as a matter of right.

20 **II. THE COURT SHOULD PERMIT CARB TO INTERVENE**

21 Should the court find that CARB is not entitled to intervene as a matter of right,<sup>1</sup> it should  
22 exercise its discretion to allow CARB to intervene by permission. A nonparty may obtain  
23 permissive intervention under section 387, subdivision (d)(2), upon a timely application when: (1)  
24 it has a direct interest in the lawsuit; (2) the intervention will not enlarge the issues raised by the  
25 original parties; and (3) the reasons for intervention outweigh any opposition by the original  
26 parties. (*People v. ex rel. Rominger v. County of Trinity* (1983) 147 Cal.App.3d 655, 660-61.) In  
27

28 <sup>1</sup> Because the People, through the Attorney General, have an unconditional statutory right to intervene in this action, the People need not seek leave to intervene as a matter of permission.

1 determining whether these requirements are met, section 387 “should be liberally construed in  
2 favor of intervention.” (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d  
3 1192, 1200, citing *Mary R. v. B & R. Corp.* (1983) 149 Cal.App.3d 308, 315.) CARB meets each  
4 of the requirements for permissive intervention and its motion should be granted.

5 **A. CARB’s Motion is Timely**

6 CARB’s motion is timely. As discussed above, this action is in an early phase and the  
7 original parties will not be prejudiced by CARB’s intervention at this stage in the proceedings.

8 **B. CARB Has a Direct Interest in This Action**

9 Because CARB has a direct interest in the litigation, this court should grant its motion to  
10 intervene. Intervention, which is intended to promote fairness by involving all parties impacted  
11 by an action, shall be liberally granted. (*Simpson Redwood Co. v. State of California, supra*, 196  
12 Cal.App.3d at pp. 1199, 1200.) “The intervener’s interest must be direct rather than  
13 consequential, and determinable in the action.” (*People v. Superior Court of Ventura County*  
14 (1976) 17 Cal.3d 732, 736.) But, it need not be a pecuniary interest. (*Simpson Redwood Co,*  
15 *supra*, 196 Cal.App.3d at p. 1200.)

16 As discussed above, CARB has a significant regulatory interest in the feasibility,  
17 implementation, and enforcement of the Project’s air quality mitigation measures related to  
18 mobile source emission impacts. CARB has a mandate to protect all Californians, especially  
19 disadvantaged communities, from the harmful effects of air pollution. (Christen Decl., ¶ 4.)  
20 CARB is further charged with advocating for the adoption of zero-emission mobile source  
21 technologies. (*Id.* at ¶ 5.) In addition, CARB has an interest in fulfilling its mission to promote  
22 and protect public health, welfare, and ecological resources through the effective reduction of air  
23 pollutants from mobile sources. CARB accomplishes this mission, in part, by challenging  
24 approvals of projects that endanger public health and/or undermine CARB’s emission reduction  
25 strategies. (*Id.* at ¶ 2.) All public agencies have a direct interest in fulfilling their official  
26 responsibilities. (*People v. Hy-Lond Enterprises, Inc.* (1979) 93 Cal.App.3d 734, 749-751;  
27 *Timberidge Enterprises v. City of Santa Rosa* (1978) 86 Cal.App.3d 872, 882.) Thus, CARB has  
28

1 a direct interest in ensuring that the Project complies with CEQA through the inclusion of  
2 sufficient mitigation measures.

3 **C. CARB’s Intervention Will Not Enlarge the Issues in the Litigation**

4 As reflected in the Joint Petition in Intervention attached hereto as Exhibit 1, CARB alleges  
5 that Respondents violated CEQA by failing to: analyze and adopt all feasible mitigation measures  
6 to avoid or substantially lessen the Project’s significant environmental impacts; discuss  
7 inconsistencies between the Project and applicable regional air quality management plans; ensure  
8 the adopted mitigation measures are fully enforceable; adequately identify the Project’s existing  
9 environmental setting; and adequately disclose and analyze the Project’s environmental impacts.  
10 (Joint Petition in Intervention, ¶¶ 67-101.) CARB’s claims are therefore within the claims that  
11 SCAQMD asserts. (SCAQMD Petition, ¶¶ 74-127.) Accordingly, CARB’s intervention will not  
12 enlarge the issues in the litigation.

13 **D. The Reasons for CARB’s Intervention Outweigh any Opposition by the**  
14 **Original Parties**

15 CARB’s reasons for intervening are discussed above. Given this action is still in an early  
16 stage and CARB’s intervention does not expand the scope of the issues before the Court, CARB’s  
17 reasons for intervening outweigh any opposition by the original parties.

18 **CONCLUSION**

19 For the foregoing reasons, the People and CARB respectfully request that the Court grant  
20 their Joint Motion to Intervene as a matter of right. In the alternative, CARB requests that it be  
21 allowed to intervene by permission. A copy of the proposed Joint Petition is attached as Exhibit  
22 1.

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Dated: November 4, 2020

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
SARAH E. MORRISON  
GARY E. TAVETIAN  
Supervising Deputy Attorneys General  
TATIANA K. GAUR  
ADAM L. LEVITAN  
Deputy Attorneys General

/s/ Lani M. Maher  
LANI M. MAHER  
Deputy Attorney General  
*Attorneys for the People of the State of  
California and the California Air Resources  
Board*

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I, Lani M. Maher, declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 4, 2020 in Los Angeles, California.

/s/ Lani M. Maher  
Lani M. Maher  
Deputy Attorney General

1                                   **DECLARATION OF MATTHEW W. CHRISTEN IN SUPPORT OF**  
2                                   **JOINT MOTION FOR LEAVE TO INTERVENE**

3           I, Matthew W. Christen, declare as follows:

4           1. I am a Senior Attorney with the California Air Resources Board (“CARB”). I have  
5 been assigned to coordinate CARB’s legal representation in the above-entitled action. I have  
6 personal knowledge of the facts set forth below and, if called as a witness, could and would  
7 competently testify thereto.

8           2. The mission of CARB, the clean air agency of the State of California, is to promote  
9 and protect public health, welfare, and ecological resources through the effective reduction of air  
10 pollutants. It accomplishes this mission, in part, by challenging approvals of projects that  
11 endanger public health and/or undermine CARB’s emission reduction strategies.

12           3. CARB has regulatory and statutory responsibilities related to reducing air emissions  
13 from mobile sources associated with shipping operations at ports. CARB has been actively  
14 engaged in incentive-related and regulatory efforts to address new and existing emissions from  
15 freight-related activities at ports in California for decades. These emissions include criteria air  
16 pollutants and toxic air contaminants such as nitrogen oxides (“NOx”) and diesel particulate  
17 matter (“DPM”), which have been linked to an increased risk of adverse health effects.

18           4. CARB has a mandate to protect all Californians, especially disadvantaged  
19 communities, from the harmful effects of air pollution. The Legislature tasked CARB with  
20 implementing Assembly Bill 617 (“AB 617”) (C. Garcia, Chap. 136, Stat. 2017), which requires  
21 specific emission reduction protections for environmental justice communities throughout the  
22 state identified as disadvantaged communities. Pursuant to AB 617, CARB identified the  
23 Wilmington, Carson, West Long Beach community, which borders the Port of Los Angeles, as  
24 one such community. In September 2020, CARB approved a Community Emissions Reduction  
25 Plan (“CERP”) prepared by SCAQMD for the Wilmington, Carson, West Long Beach  
26 community, which includes several measures to reduce emissions from the Port of Los Angeles  
27 and from freight traffic traveling through the community to access the Port. The Wilmington,  
28



1 Carson, West Long Beach CERP is largely directed at reducing mobile source emissions from  
2 port-related activities.

3 5. Also in September 2020, Governor Newsom ordered CARB to develop and propose  
4 regulations and strategies aimed at achieving the phased in use of zero-emissions drayage trucks  
5 and off-road vehicles and equipment. (Governor’s Exec. Order No. N-79-20 (Sep. 23, 2020).)  
6 CARB advocates for the adoption of these zero-emissions mobile source technologies throughout  
7 the state.

8 6. The South Coast Air Quality Management District (“SCAQMD”) has jurisdiction  
9 over stationary sources of air pollution. Only CARB has primary statutory jurisdiction over air  
10 pollution emissions from mobile sources.

11 7. On September 16, 2020, SCAQMD filed a petition for writ of mandate and complaint  
12 for declaratory relief against the City of Los Angeles, the Los Angeles City Council, the Los  
13 Angeles Harbor Department, and the Los Angeles Board of Harbor Commissioners in Los  
14 Angeles County Superior Court. The petition alleges violations of the California Environmental  
15 Quality Act, Public Resources Code section 21000, et seq.

16 8. In September 2020, SCAQMD notified CARB of its petition by way of delivering, by  
17 email, a courtesy copy.

18 9. Since receiving notice of SCAQMD’s petition, CARB has spent considerable time  
19 and effort reviewing the petition, evaluating and seeking to verify the factual and legal allegations  
20 contained therein, communicating with the parties to fully understand the arguments on both  
21 sides, and preparing internal briefing documents and pleadings with the intent to seek intervention  
22 in the action to protect CARB’s interests. As such, CARB did not unreasonably delay filing its  
23 motion for leave to intervene.

24 I, Matthew W. Christen, declare under penalty of perjury under the laws of the State of  
25 California that the above is true and correct.

26 Executed on November 4, 2020 in Davis, California.

27 /s/ Matthew W. Christen  
28 Matthew W. Christen  
Senior Attorney

# **Exhibit 1**

1 XAVIER BECERRA  
Attorney General of California  
2 SARAH E. MORRISON  
GARY E. TAVETIAN  
3 Supervising Deputy Attorneys General  
TATIANA K. GAUR, State Bar No. 246227  
4 ADAM L. LEVITAN, State Bar No. 280226  
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8 *Attorneys for Intervenors the People of the State of  
California and the California Air Resources Board*

**Exempt from Filing Fees pursuant to  
Government Code section 6103**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

13 **SOUTH COAST AIR QUALITY  
14 MANAGEMENT DISTRICT, a Public  
Entity,**  
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28  
Petitioner,  
  
v.  
  
Respondents.

Case No. 20STCP02985

**[PROPOSED] JOINT PETITION FOR  
WRIT OF MANDATE IN  
INTERVENTION**

**[Code Civ. Proc., §§ 387, 1085, 1094.5;  
Gov. Code, § 12606; Pub. Resources  
Code, § 21167]**

**ACTION BASED ON THE  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT (CEQA)**

Dept: G  
Judge: Honorable John A. Torribio  
Action Filed: September 16, 2020

**CHINA SHIPPING (NORTH AMERICA)  
HOLDING CO. LTD, a Delaware  
corporation; COSCO SHIPPING (NORTH  
AMERICA), INC., a California corporation;  
WEST BASIN CONTAINER TERMINAL  
LLC, a Delaware corporation; CHINA  
COSCO SHIPPING CORPORATION  
LIMITED, a corporation; and DOES 1  
THROUGH 50, inclusive,**  
  
Real Parties in Interest.

1 **PEOPLE OF THE STATE OF**  
2 **CALIFORNIA EX REL. XAVIER**  
3 **BECERRA, ATTORNEY GENERAL; and**  
4 **THE CALIFORNIA AIR RESOURCES**  
5 **BOARD,**

Petitioner-Intervenors.

## INTRODUCTION

6 1. The People of the State of California, acting by and through Attorney General  
7 Xavier Becerra (“the People”), and the California Air Resources Board (“CARB”) bring this  
8 action pursuant to California Code of Civil Procedure sections 1085 and 1094.5, and California  
9 Public Resources Code section 21167, challenging the approvals by Respondents the City of Los  
10 Angeles, the Los Angeles City Council, the Los Angeles Harbor Department, and the Los  
11 Angeles Board of Harbor Commissioners (collectively, “Respondents”) of the revised Berths 97-  
12 109, China Shipping Container Terminal project (“Revised Project”) under the California  
13 Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., including  
14 the: (1) certification of the final supplemental environmental impact report (“SEIR”) for the  
15 Revised Project; (2) adoption of related findings, statement of overriding considerations, and  
16 mitigation monitoring plan; and (3) approval of the Revised Project. The People and CARB also  
17 challenge Respondents’ failure to enforce the full implementation of mitigation measures adopted  
18 in 2008 based on a certified final environmental impact statement/environmental impact report  
19 (“2008 EIR”).

20 2. The Port of Los Angeles is the busiest seaport in the Western Hemisphere. In  
21 2019, the Port of Los Angeles handled 9.3 million twenty-foot-equivalent units of containerized  
22 cargo, representing 17% of the nation’s market share. Berths 97-109 at the Port of Los Angeles  
23 are commonly known as the China Shipping Container Terminal (“China Shipping Terminal” or  
24 “Terminal”). The communities closest to the China Shipping Terminal are predominantly low-  
25 income communities and communities of color that are particularly vulnerable to environmental  
26 pollution and are already exposed to a disproportionately high pollution burden, including diesel  
27 particulate matter emissions generated by port operations.



1 of disadvantaged communities from the harmful effects of air pollution, the adoption of zero-  
2 emission technologies, and the achievement of statewide emission reduction goals; the disposition  
3 of this action may impair or impede CARB’s ability to protect those interests; CARB’s interests  
4 are not adequately represented by the existing parties; CARB’s intervention will not enlarge the  
5 issues raised by the original parties; and CARB’s reasons for intervening outweigh any opposition  
6 by the original parties. (See Code Civ. Proc., § 387, subd. (d); *People v. ex rel. Rominger v.*  
7 *County of Trinity* (1983) 147 Cal.App.3d 655, 660-61.)

8 8. The People’s and CARB’s intervention is timely. The administrative record has  
9 not yet been certified and neither a briefing schedule nor a hearing date has been set.  
10 Accordingly, the People’s and CARB’s intervention will not cause any prejudice to the existing  
11 parties.

#### 12 **PARTIES**

13 9. The Attorney General, as the chief law enforcement officer of the State of  
14 California, has broad independent powers under the California Constitution and the California  
15 Government Code to participate in all legal matters in which the State is interested. (Cal. Const.,  
16 art. V, § 13; Gov. Code, § 12511.) The Attorney General has express authority to participate in  
17 cases involving the protection of California’s environment and a unique and important role in the  
18 enforcement of CEQA. (Gov. Code, §§ 12600-12612; Pub. Resources Code, §§ 21167.7, 21177,  
19 subd. (d); *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465.) “The Attorney  
20 General may maintain an action for equitable relief in the name of the people of the State of  
21 California against any person for the protection of the natural resources of the state from  
22 pollution, impairment, or destruction.” (Gov. Code, § 12607.) The People file this Joint Petition  
23 for Writ of Mandate (“Joint Petition”) pursuant to the Attorney General’s independent power to  
24 protect the natural resources of the State from pollution, impairment, or destruction in furtherance  
25 of the public interest.

26 10. CARB is a public agency of the State of California within the California  
27 Environmental Protection Agency. CARB is the clean air agency of the State of California,  
28 charged with controlling emissions from motor vehicles and coordinating, encouraging, and

1 reviewing the efforts of all levels of government as they affect air quality. (Health & Saf. Code, §  
2 39500.) CARB also has primary jurisdiction over air pollutant emissions from other mobile  
3 sources, including sources associated with the Revised Project that are directly at issue in this  
4 action. (Health & Saf. Code, §§ 36950- 36975, 39500, 39607.1, 40000-40006, 40920.6, 40920.8,  
5 42400, 42402, 42411, 42705.5, 44391.2.) In this role, CARB coordinates efforts to attain and  
6 maintain ambient air quality standards, conducts research into the causes of, and solutions to, air  
7 pollution, and develops and implements programs to address the serious public health problems  
8 caused by emissions of air pollutants throughout the state. In particular, CARB works to reduce  
9 the public health effects related to air pollution through the implementation of Assembly Bill 617  
10 (“AB 617”) (C. Garcia, Chap. 136, Stat. 2017), which enables CARB to address community-  
11 specific pollution affecting disadvantaged communities throughout California. (Health & Saf.  
12 Code, § 44391.2.)

13 11. Respondent City of Los Angeles (“City”) is and was, at all relevant times, a  
14 charter city and a political subdivision of the State of California organized and existing under  
15 Government Code section 34000 et seq. The City is a local governmental agency charged with  
16 regulating and controlling local land use and development within its territory in compliance with  
17 provisions of state law, including CEQA.

18 12. Respondent Los Angeles Harbor Department, also known as the Port of Los  
19 Angeles (“Port”), is an independent department of the City. The Port is the CEQA lead agency for  
20 the Original Project and the Revised Project under Public Resources Code section 21067.  
21 Accordingly, the Port was responsible for preparing both the 2008 EIR and the SEIR.

22 13. Respondent Los Angeles Board of Harbor Commissioners (“Board”) is the  
23 nonelected decisionmaking body of the Port. Because the Board has authority to grant project  
24 approval, it was responsible for conducting a review of the Revised Project’s environmental  
25 impacts and determining whether to certify the SEIR pursuant to CEQA.

26 14. Respondent Los Angeles City Council (“City Council”) is the elected legislative  
27 body of the City. The City Council is responsible for hearing administrative appeals for decisions  
28 made by individual city departments, making certain land use decisions, and ensuring those

1 decisions are made in compliance with applicable laws. Because the Los Angeles Board of  
2 Harbor Commissioners is a nonelected decisionmaking body, the City Council is responsible for  
3 hearing and resolving all administrative appeals of the Board of Harbor Commissioners’  
4 certification of the SEIR and ultimately reviewing and approving or denying the Revised Project,  
5 pursuant to Public Resources Code section 21151, subdivision (c).

6 15. Real Parties in Interest China Shipping (North America) Holding Co., Ltd., China  
7 COSCO Shipping Corporation Limited, COSCO SHIPPING (North America), Inc., and West  
8 Basin Container Terminal LLC are listed as “Implementing or Undertaking  
9 Parties/Lesseees/Licensees/Permittees” for the Revised Project on the Notice of Determination  
10 filed by the City Council with the State Clearinghouse in the Governor’s Office of Planning and  
11 Research pursuant to Public Resources Code section 21152, subdivision (a).

12 16. The People and CARB are informed, believe, and therefore allege that China  
13 Shipping (North America) Holding Co., Ltd. is a corporation organized and existing under the  
14 laws of the State of Delaware.

15 17. The People and CARB name China COSCO Shipping Corporation Limited as a  
16 Real Party in Interest pursuant to Public Resources Code section 21165.6.5 because China  
17 COSCO Shipping Corporation Limited is listed on the Notice of Determination for the Revised  
18 Project as an implementing or undertaking party/lessee/licensee/permittee. The jurisdiction that  
19 China COSCO Shipping Corporation Limited was organized under is unknown to the People and  
20 CARB despite reasonable investigation.

21 18. The People and CARB are informed, believe, and therefore allege that COSCO  
22 SHIPPING (North America), Inc. is a corporation organized and existing under the laws of the  
23 State of California.

24 19. Real Parties in Interest China Shipping (North America) Holding Co. Ltd., China  
25 COSCO Shipping Corporation Limited, COSCO SHIPPING (North America), Inc. (collectively,  
26 “China Shipping”) lease the China Shipping Terminal from the Port.

27 20. The People and CARB are informed, believe, and therefore allege that West Basin  
28 Container Terminal LLC is a corporation organized and existing under the laws of the State of



1 Delaware. West Basin Container Terminal LLC operates the China Shipping Terminal under the  
2 lease agreement between China Shipping and the Port.

3 21. Does 1 through 50, inclusive, are persons whose names and identities are unknown  
4 to the People and CARB at this time, and the People and CARB therefore name them as Real  
5 Parties in Interest under these fictitious names. The People and CARB will amend this Joint  
6 Petition to allege the true names and capacities of Does 1 through 50 as soon as they are  
7 discovered.

### 8 **JURISDICTION AND VENUE**

9 22. This Court has jurisdiction over the matters alleged in this Petition pursuant to  
10 Public Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085  
11 and 1094.5.

12 23. Venue is appropriate in Los Angeles County Superior Court in accordance with  
13 Code of Civil Procedure sections 394 (actions against a city, county, or local agency) and 395  
14 (actions generally) because Respondents include a city and local agencies located in the County  
15 of Los Angeles and the violations of CEQA alleged in this Joint Petition arose in the County of  
16 Los Angeles.

17 24. The People and CARB have satisfied all statutory prerequisites to filing this  
18 action.

### 19 **STATUTORY AND REGULATORY REQUIREMENTS**

20 25. The primary purposes of CEQA are to: inform governmental decisionmakers and  
21 the public of a project's potential significant environmental effects before the project is approved  
22 and those effects become irreversible; identify ways that environmental damage can be avoided or  
23 reduced; prevent significant, avoidable environmental damage by requiring the adoption of  
24 feasible alternatives or feasible mitigation measures; and disclose to the public a governmental  
25 agency's reasons for approving a project with significant environmental impacts. (Cal. Code  
26 Regs., tit. 14, § 15002, subd. (a).)

27 26. "CEQA is essentially an environmental full disclosure statute, and the  
28 [environmental impact report ("EIR")] is the method by which this disclosure is made." (*Rural*

1 *Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1020; see also Pub. Resources  
2 Code, § 21061 [defining “environmental impact report” and generally discussing its purpose and  
3 contents].) In order to meet CEQA’s disclosure requirements, an EIR must be “prepared with a  
4 sufficient degree of analysis to provide decisionmakers with information which enables them to  
5 make a decision which intelligently takes account of environmental consequences.” (Cal. Code  
6 Regs., tit. 14, § 15151.) In addition, an EIR “shall discuss any inconsistencies between the  
7 proposed project and applicable...regional plans [which] include, but are not limited to, the  
8 applicable air quality attainment or maintenance plan (or State Implementation Plan),... [and]  
9 plans for the reduction of greenhouse gas emissions...” (Cal. Code Regs., tit. 14, § 15125, subd.  
10 (d).)

11 27. A “lead agency” for purposes of CEQA “has the principal responsibility for  
12 carrying out or approving a project which may have a significant effect upon the environment.”  
13 (Pub. Resources Code, § 21067.) The lead agency is responsible for preparing an EIR, where  
14 necessary. (Cal. Code Regs., tit. 14, § 15050.)

15 28. The purpose of an EIR is to identify a project’s significant environmental impacts,  
16 feasible alternatives to the project, and feasible mitigation measures to reduce or avoid the  
17 project’s significant environmental impacts. (Pub. Resources Code, §§ 21002, 21002.1, subd. (a).)  
18 In addition to direct impacts, substantial environmental impacts include effects that are  
19 individually limited and cumulatively considerable, or “significant when viewed in connection  
20 with the effects of past projects, the effects of other current projects, and the effects of probable  
21 future projects.” (Cal. Code Regs., tit. 14, §§ 15065, subd. (a)(3), 15130, 15355.) Significant  
22 environmental impacts include effects that will “cause substantial adverse effects on human  
23 beings, either directly or indirectly.” (Cal. Code Regs., tit. 14, § 15065, subd. (a)(4).) Central to  
24 this impact analysis is the lead agency’s environmental setting for the project, which establishes  
25 baseline conditions and allows the lead agency to determine whether a project will have a  
26 significant impact on the environment. (Cal. Code Regs., tit. 14, § 15125, subd. (a).)

27 29. Lead agencies “should not approve projects as proposed if there are feasible  
28 alternatives or feasible mitigation measures available which would substantially lessen the

1 significant environmental impacts of such projects[.]” (Pub. Resources Code, § 21002.) As such,  
2 CEQA requires each lead agency to “mitigate or avoid the significant effects on the environment  
3 of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Resources Code,  
4 § 21002.1, subd. (b).)

5 30. CEQA lead agencies must “ensure that feasible mitigation measures will actually  
6 be implemented as a condition of development, and not merely adopted and then neglected or  
7 disregarded.” (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83  
8 Cal.App.4th 1252, 1261 [citing Pub. Resources Code, § 21002.1, subd. (b)].) Thus, mitigation  
9 measures adopted pursuant to an EIR in order to mitigate or avoid a project’s significant impacts  
10 on the environment must be “fully enforceable through permit conditions, agreements, or other  
11 measures.” (Pub. Resources Code, § 21081.6, subd. (b).)

12 31. CEQA requires a lead agency to adopt a mitigation monitoring and/or reporting  
13 program in order to ensure that adopted mitigation measures are implemented. “[U]ntil mitigation  
14 measures have been completed the lead agency remains responsible for ensuring that  
15 implementation of the mitigation measures occurs in accordance with the program.” (Cal. Code.  
16 Regs., tit. 14, § 15097, subd. (a).)

17 32. If a lead agency decides to approve a project despite the fact that it has significant  
18 and unavoidable impacts, a lead agency must adopt a statement of overriding considerations to  
19 explain its decision. (Cal. Code. Regs., tit. 14, §§ 15092, subd. (b)(2)(B), 15093, subd. (b).) To  
20 support a statement of overriding considerations, a lead agency must find that “the specific  
21 economic, legal, social, technological, or other benefits, including region-wide or statewide  
22 environmental benefits, of a proposed project outweigh the unavoidable adverse environmental  
23 effects,” rendering the adverse environmental effects “acceptable.” (Cal. Code. Regs., tit. 14,  
24 §15093, subd. (a).)

25 33. When an EIR has been certified, a subsequent or supplemental EIR must be  
26 prepared where, *inter alia*, “[s]ubstantial changes are proposed in the project which will require  
27 major revisions of the environmental impact report.” (Pub. Resources Code, § 21166, subd. (a);  
28 Cal. Code Regs., tit. 14, §§ 15162, subd. (a)(1), 15163.)



1 increased cancer risk, the development of asthma, chronic obstructive pulmonary disease,  
2 decreased lung function, and heart attacks.

3 38. The combination of increased air pollutant emissions due to Port-related  
4 operations and the heightened sensitivity to that pollution of sensitive receptors (i.e., residences,  
5 schools, senior centers, daycares, etc.) located near the Port will result in a more severe impact on  
6 public health. The residents living closest to the China Shipping Terminal are more vulnerable to  
7 pollution than much of the state based on several health indicators, including instances of low  
8 birth weight (94th percentile) and asthma-related hospital visits (88th percentile). According to  
9 SCAQMD, this area also has the highest estimated cancer risk in the South Coast Air Basin,  
10 which is home to more than 17 million people in Los Angeles, San Bernardino, Orange, and  
11 Riverside counties.

12 39. For decades, CARB has been actively engaged in incentive-related and regulatory  
13 efforts to address new and existing emissions from freight-related activities at ports in California.  
14 Underlying these efforts is the urgent public health concerns related to emissions from on-shore  
15 port freight movement and from ocean-going vessels. These emissions include criteria air  
16 pollutants and air toxic contaminants such as nitrogen oxides (“NOx”) and diesel particulate  
17 matter, both of which are linked to adverse health effects.

18 40. CARB works to protect communities experiencing disproportionately high  
19 exposure to air pollution, including carrying out its responsibilities under AB 617. AB 617 was  
20 enacted in 2017 to reduce air pollution and improve public health in communities that experience  
21 disproportionately high exposure to air pollutants. Pursuant to AB 617, CARB established the  
22 Community Air Protection Program and selected 13 “disadvantaged communities” statewide for  
23 inclusion in program, including the Wilmington, Carson, West Long Beach Community located  
24 in close proximity to the China Shipping Terminal.

25 41. CARB selected the Wilmington, Carson, West Long Beach community for both  
26 components of the Community Air Protection Program – community air monitoring and the  
27 development of a community emissions reduction program (“CERP”) due to its high cumulative  
28 pollution burden, the presence of a significant number of sensitive populations (including

1 children, the elderly, and individuals with pre-existing conditions), and the socioeconomic  
2 challenges experienced by its residents. CARB approved the CERP for the Wilmington, Carson,  
3 West Long Beach Community in September 2020, which includes several measures to reduce  
4 emissions from the Port and attendant emissions from freight traffic traveling to and from the Port  
5 through the community.

6 **Permit 999, Original Project, and 2008 EIR**

7 42. In May 2001, the City Council approved an agreement with China Shipping for the  
8 development and long-term use of the China Shipping Terminal (“Permit 999”). Permit 999 did  
9 not, and does not, require China Shipping to agree to lease amendments incorporating mitigation  
10 measures included in certified EIRs for the China Shipping Terminal. When the City Council  
11 approved Permit 999, it contemporaneously directed the Port to develop a “Side Letter” with  
12 China Shipping showing China Shipping’s commitment to implement certain operational air  
13 quality mitigation measures.

14 43. In July 2001, the City Council approved the Side Letter. The Side Letter imposed  
15 several air quality mitigation measures. Noting that there was “no accountability built into the  
16 Side Letter,” the City Council voted to require quarterly reporting regarding the status of  
17 compliance with each of the mitigation measures contained therein, including, but not limited to,  
18 the following:

19 a. Oceangoing container vessels owned by China Shipping will comply with  
20 the voluntary vessel speed reduction program, by reducing vessel speed to or below 12-  
21 knots within 20 nautical miles of Point Fermin, or with “an approved alternative  
22 compliance plan.”

23 b. While at berth, oceangoing container vessels owned by China Shipping  
24 will minimize the use of auxiliary engines and will shut down main propulsion engines  
25 unless they are necessary for testing or to maintain maneuverability.

26 44. The Port did not prepare an EIR for the approval of Permit 999. A group of non-  
27 governmental organizations led by the Natural Resources Defense Council (collectively,  
28 “NRDC”), filed a CEQA lawsuit challenging Respondents’ failure to prepare a project-specific

1 EIR for the construction and operation of the China Shipping Terminal. The Attorney General  
2 submitted an amicus brief supporting NRDC's position on October 1, 2002.

3 45. In 2004, Respondents and NRDC reached a settlement and the court entered an  
4 Amended Stipulated Judgment resolving the litigation, which allowed the China Shipping  
5 Terminal to operate while Respondents prepared and certified an EIR for the Terminal. The  
6 Amended Stipulated Judgment required the Port and the City to "each reconsider their approvals  
7 of the Lease in light of the new China Shipping EIR." In addition, pursuant to the Amended  
8 Stipulated Judgment, the Port agreed to implement certain environmental mitigation requirements  
9 at the Terminal, including the following:

10 a. The Port shall require that all yard tractors used at the China Shipping  
11 Terminal be powered only by alternative fuels by August 31, 2004.

12 b. The Port shall install the necessary electrical infrastructure to provide  
13 alternative maritime power ("AMP"), shall pay the costs (up to \$5 million) of retrofitting  
14 oceangoing container vessels owned by China Shipping so that they may utilize AMP, and  
15 shall require that at least 70% of oceangoing container vessels owned by China Shipping  
16 utilize AMP while at berth at the Terminal by July 1, 2005 (unless the utilization of AMP  
17 at the Terminal is determined to be infeasible).

18 46. The Amended Stipulated Judgment required the Port to amend Permit 999 to  
19 incorporate the mitigation measures included in the Judgment "so that they are binding upon  
20 China Shipping."

21 47. China Shipping sued the City, alleging that it had incurred costs and damages  
22 resulting from delays associated with litigation and imposition of the mitigation requirements  
23 contained in the Amended Stipulated Judgment. To settle China Shipping's claims and to satisfy  
24 the Amended Stipulated Judgment, Permit 999 was amended in 2005. Through this amendment,  
25 in exchange for additional acreage at the port and extensive financial compensation from the City,  
26 China Shipping agreed to comply with the mitigation measures included in the Amended  
27 Stipulated Judgment. China Shipping's lease term under the amended Permit 999 extends through  
28 2045.

1           48. Respondents prepared and certified the 2008 EIR pursuant to the Amended  
2 Stipulated Judgment. The 2008 EIR identified and analyzed the Original Project’s expected  
3 environmental impacts. This analysis was based in part on the assumption that the Original  
4 Project’s maximum cargo-handling capacity was 1,551,000 twenty-foot-equivalent units, or  
5 approximately 838,000 standard shipping containers, per year. That throughput would require  
6 approximately 1,500,000 heavy duty drayage truck trips, 234 oceangoing container vessel calls,  
7 and 816 train trips per year.

8           49. The 2008 EIR contained a chapter evaluating the environmental justice impacts of  
9 the Original Project, which concluded that operation of the China Shipping Terminal would have  
10 disproportionately high and adverse individual and cumulative air quality impacts on nearby  
11 minority and low-income populations.

12           50. The 2008 EIR included 52 mitigation measures designed to reduce the Original  
13 Project’s impacts on the environment, including air quality measures. The 2008 EIR’s Findings of  
14 Fact and Statement of Overriding Considerations approved by Respondents stated that the air  
15 quality mitigation measures in the 2008 EIR, including AQ-9, AQ-10, AQ-15, AQ-16, AQ-17,  
16 AQ-20, and AQ-23, represented “feasible means to reduce air pollution impacts from proposed  
17 operational sources” at the China Shipping Terminal. Accordingly, Respondents adopted those  
18 measures as part of the Original Project.

19           51. Respondents failed to fully enforce the implementation of 11 mitigation measures  
20 included in the 2008 EIR. Seven of these measures were designed and adopted to reduce the  
21 Original Project’s significant air quality impacts, as follows:

22           a. Mitigation Measure AQ-9: 100% of ships owned by China Shipping must  
23 utilize AMP while hoteling in the Port by January 1, 2011.

24           b. Mitigation Measure AQ-10: 100% of ships calling at the China Shipping  
25 Terminal must comply with the expanded vessel speed reduction program (“VSRP”),  
26 reducing their speed to 12 knots or lower between 40-nautical-miles from Point Fermin  
27 and the Precautionary Area by 2009.



1 c. Mitigation Measure AQ-15: All yard tractors operated at the China  
2 Shipping Terminal must run on alternative fuel and meet Tier 4 engine standards by  
3 January 1, 2015.

4 d. Mitigation Measure AQ-16: All equipment less than 750 horsepower  
5 shall meet Tier 4 engine standards by the end of 2012. All diesel-powered equipment  
6 operated at the terminal rail yard that handles containers moving through the China  
7 Shipping Terminal shall meet Tier 4 engine standards by December 31, 2014.

8 e. Mitigation Measure AQ-17: By January 1, 2009, all rubber-tired gantry  
9 cranes shall be electric and all top-picks shall run on alternative fuel and meet Tier 4  
10 engine standards. By 2014, all terminal equipment other than yard tractors, rubber-tired  
11 gantry cranes, and top-picks shall meet Tier 4 engine standards. In addition, China  
12 Shipping shall participate in a one-year electric yard tractor pilot project. If the pilot  
13 project is successful, China Shipping shall replace 50% of the yard tractors utilized at the  
14 China Shipping Terminal with electric units within 5 years of the feasibility  
15 determination.

16 f. Mitigation Measure AQ-20: Heavy-duty trucks entering the China  
17 Shipping Terminal shall be fueled by liquid natural gas as follows: 50% in 2012 and 2013;  
18 70% in 2014, 2015, 2016, and 2017; and 100% in 2018 and thereafter.

19 g. Mitigation/Lease Measure AQ-23: If the China Shipping Terminal's  
20 throughput exceeds the 2008 EIR's projections, staff shall evaluate whether the increased  
21 throughput causes identified emissions sources to exceed the 2008 EIR's assumptions. If  
22 actual criteria air pollutant emissions exceed those analyzed in the 2008 EIR, new or  
23 additional mitigation measures will be applied through the periodic review of new  
24 technology, required separately under another mitigation measure.

25 52. In 2015, the Port issued a Notice of Preparation for the SEIR acknowledging its  
26 failure to enforce the mitigation measures included in the 2008 EIR.

27 53. The China Shipping Terminal has been operating continuously since 2005,  
28 exposing nearby communities to significant emissions of air pollutants that could have been

1 reduced or avoided if Respondents had enforced the feasible mitigation measures adopted as part  
2 of the Original Project under the 2008 EIR, as required by CEQA.

3 **Revised Project and SEIR**

4 54. The Port circulated a draft supplemental EIR for the Revised Project for public  
5 review and comment in June 2017. NRDC and SCAQMD both submitted extensive comments  
6 arguing that the draft supplemental EIR failed to meet several requirements of CEQA. CARB also  
7 commented, expressing its view that the draft supplemental EIR violated CEQA and would, as a  
8 result, increase the air pollution burden on nearby disadvantaged communities.

9 55. In September 2018, the Port issued a recirculated draft supplemental EIR for  
10 public review and comment. NRDC and SCAQMD again submitted lengthy comments arguing  
11 that the recirculated draft supplemental EIR violated CEQA.

12 56. The Port released the SEIR in September 2019. Despite public comments asserting  
13 that the draft supplemental EIR and recirculated draft supplemental EIR failed to meet several  
14 requirements of CEQA, the Port did not correct those deficiencies in the SEIR.

15 57. The SEIR's Project Setting provides incomplete information regarding the nearby  
16 communities that will be affected by the Revised Project. Although the SEIR mentions that the  
17 Revised Project is bounded by the community of San Pedro and that land uses in the area include  
18 recreational and residential uses, the SEIR's Project Setting ignores the fact that the Revised  
19 Project is located in close proximity to several residential communities in addition to San Pedro,  
20 including the community of Wilmington, Carson, and West Long Beach, which is designated as a  
21 disadvantaged community under AB 617. Moreover, the SEIR's Project Setting does not provide  
22 information regarding the disproportionately high pollution burden and the elevated levels of  
23 adverse health outcomes that communities near the Port are already experiencing.

24 58. The SEIR estimates the Revised Project's maximum cargo handling capacity at  
25 1,698,504 twenty-foot-equivalent units per year by 2030, representing an increase of roughly  
26 9.5% as compared to the 2008 EIR's projection of the Original Project's maximum cargo  
27 handling capacity. The SEIR estimates that the maximum throughput will require approximately  
28 1,514,062 heavy duty drayage truck trips, 156 oceangoing container vessel calls, and 738 train

1 trips per year. This increase in throughput, in conjunction with the weakening and removal of  
2 mitigation measures designed to lessen the Terminal's air quality impacts, will result in  
3 significant emissions of harmful air pollutants.

4 59. The Revised Project will have significant individual and cumulative impacts,  
5 including the incremental contribution to significant air quality impacts already being felt by  
6 neighboring communities. (Pub. Resources Code, § 21083 subd. (b).) The SEIR acknowledges  
7 that the Revised Project's emissions of CO, VOC, NOx, NO2, particulate matter, and CO2e will  
8 exceed SCAQMD's thresholds of significance. The SEIR also concludes that operational  
9 emissions of toxic air contaminants from the Revised Project will increase incremental individual  
10 cancer risks above the significance threshold for residential, occupational, and sensitive receptors.  
11 However, the SEIR fails to translate bare air pollutant data into quantified adverse health impacts  
12 on those living in the communities near the Revised Project.

13 60. All seven of the air quality mitigation measures that were adopted but not fully  
14 implemented under the 2008 EIR have been modified or removed under the SEIR as follows:

15 a. Mitigation Measure AQ-9: Upon the effective date of a new lease  
16 amendment between China Shipping and the Port, 95% of all ships calling at the China  
17 Shipping Terminal must use AMP while hoteling in the Port. However, this requirement  
18 does not apply if there is an emergency, an AMP-capable berth is unavailable, an AMP-  
19 capable ship is not able to plug in, or a ship is not AMP-capable.

20 b. Mitigation Measure AQ-10: Upon the effective date of a new lease  
21 amendment between China Shipping and the Port, 95% of all ships calling at the China  
22 Shipping Terminal must comply with the expanded VSRP, reducing their speed to 12  
23 knots or lower between 40-nautical-miles from Point Fermin and the Precautionary Area.

24 c. Mitigation Measure AQ-15: Within one year of the effective date of a new  
25 lease amendment between China Shipping and the Port, all yard tractors of model years  
26 2007 or older shall be replaced with alternative-fuel units that meet or are lower than a  
27 NOx emission rate of 0.02 g/bhp-hr and Tier 4 off-road engine emission rates for other  
28 criteria pollutants. Within five years of the effective date of a new lease amendment, all

1 yard tractors of model years 2011 or older shall be replaced with alternative fuel units that  
2 meet or are lower than a NOx emission rate of 0.02 g/bhp-hr and Tier 4 off-road engine  
3 emission rates for other criteria pollutants.

4 d. Mitigation Measure AQ-16: Included in AQ-17 under the SEIR.

5 e. Mitigation Measure AQ-17: Within one year of the effective date of a new  
6 lease amendment between China Shipping and the Port, all 18-ton diesel forklifts of  
7 model years 2004 and older and all diesel top-picks of model years 2006 and older shall  
8 be replaced with units that meet Tier 4 off-road engine emission rates for particulate  
9 matter and NOx. Within two years of the effective date of a new lease amendment, all 18-  
10 ton diesel forklifts of model years 2005 and older shall be replaced with units that meet  
11 Tier 4 off-road engine emission rates for particulate matter and NOx and all 5-ton forklifts  
12 of model years 2011 and older shall be replaced with zero-emission units. Within three  
13 years of the effective date of a new lease amendment, all 18-ton diesel forklifts of model  
14 years 2007 and older and all diesel top-picks of model years 2007 and older shall be  
15 replaced with units that meet Tier 4 off-road engine emission rates for particulate matter  
16 and NOx. In addition, all diesel rubber-tired gantry cranes of model years 2003 and older  
17 shall be replaced with diesel-electric hybrid units that meet Tier 4 off-road engine  
18 emission rates for particulate matter and NOx. Within five years of the effective date of a  
19 new lease amendment, all diesel top-picks of model years 2014 and older shall be replaced  
20 with units that meet Tier 4 off-road engine emission rates for particulate matter and NOx  
21 and all diesel rubber-tired gantry cranes of model years 2004 and older shall be replaced  
22 with diesel-electric hybrid units that meet Tier 4 off-road engine emission rates for  
23 particulate matter and NOx. Within six years of the effective date of a new lease  
24 amendment, sweepers shall be alternative fueled or the cleanest available. Within seven  
25 years of the effective date of a new lease amendment, gasoline shuttle busses shall be  
26 zero-emission units. In addition, four rubber-tired gantry cranes of model years 2005 and  
27 older shall be replaced with all-electric units and one diesel rubber-tired gantry crane of  
28 model year 2005 shall be replaced with a diesel-electric hybrid unit that meets Tier 4 off-

1 road engine emission rates for particulate matter and NOx.

2 f. Mitigation Measure AQ-20: Removed under the SEIR.

3 g. Mitigation/Lease Measure AQ-23: Redesignated as a lease measure and  
4 removed under the SEIR.

5 61. Implementation of each of the four remaining mitigation measures at issue (AQ-9,  
6 AQ-10, AQ-15, and AQ-17) is expressly contingent upon the effective date of an amendment to  
7 Permit 999 incorporating the measures. Therefore, if such an amendment is never executed, these  
8 mitigation measures will never be implemented.

9 **Approval of the Revised Project and Administrative Appeals**

10 62. On October 8, 2019, the Board certified the SEIR and approved the Revised  
11 Project.

12 63. NRDC and SCAQMD appealed the Board's certification of the SEIR and approval  
13 of the Revised Project to the City Council on October 18, 2019 and December 4, 2019,  
14 respectively. The appeals challenged the legal adequacy of the SEIR under CEQA and sought to  
15 invalidate the Board's approval of the Revised Project and certification of the SEIR.

16 64. CARB submitted a letter supporting SCAQMD's appeal to the City Council on  
17 February 3, 2020.

18 65. The Attorney General submitted a letter supporting the appeals filed by NRDC and  
19 SCAQMD on April 7, 2020.

20 66. On August 12, 2020, the City Council held a public hearing on the appeals filed by  
21 NRDC and SCAQMD. The City Council denied the appeals, certified the SEIR, and approved the  
22 Revised Project. Respondents filed the Notice of Determination with the State Clearinghouse in  
23 the Governor's Office of Planning and Research on August 17, 2020.

24 **FIRST CAUSE OF ACTION**

25 **(Violations of CEQA)**

26 **(Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)**

27 67. The allegations in paragraphs 1 through 66 are realleged and incorporated by  
28 reference herein as though set forth in full.



1 are an integral part of this environmental setting and must be considered in any analysis of the  
2 project’s impacts. An agency is required to find that a “project may have a ‘significant effect on  
3 the environment’” if, among other things, “[t]he environmental effects of a project will cause  
4 substantial adverse effects on human beings, either directly or indirectly.” (Pub. Resources Code,  
5 § 21083, subd. (b)(3); see also Cal. Code Regs., tit. 14, § 15126.2.) A lead agency must determine  
6 whether pollution from a proposed project will have a significant effect on any nearby  
7 community, when considered together with any pollution burdens that community is already  
8 bearing, or may bear from future projects. In making a determination regarding the significance  
9 of a project’s impacts, lead agencies must therefore take special care to consider the presence of  
10 impacted communities, including the presence of any “sensitive receptors” to significant  
11 environmental impacts. The fact that an area is already heavily polluted makes it more likely that  
12 any additional, unmitigated pollution will be significant.

13 75. Respondents violated CEQA by failing to adequately describe the existing  
14 environmental setting surrounding the Revised Project. (Cal. Code Regs., tit. 14, § 15125.) As a  
15 result, the SEIR also fails to disclose the nature and magnitude of the Revised Project’s direct and  
16 cumulative impacts on that existing setting, including human beings in the surrounding  
17 communities. (Cal. Code. Regs., tit. 14, § 15126.2.) This failure constitutes a prejudicial abuse of  
18 discretion. (Pub. Resources Code, §§ 21005(a), 21168.5.)

19 **Failure to Adequately Disclose and Analyze the Revised Project’s Environmental Impacts**

20 (Cal. Code Regs., tit. 14, §§ 15125, subd. (a)(1), 15126.2, subd. (a), 15151)

21 76. The SEIR fails to adequately disclose and analyze the Revised Project’s air quality  
22 impacts by, *inter alia*, utilizing an improper baseline and assuming Permit 999 would be amended  
23 to include the SEIR’s mitigation measures in 2019.

24 77. “CEQA analysis [must] employ a realistic baseline that will give the public and  
25 decision makers the most accurate picture practically possible of the project’s likely impacts.”  
26 (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th  
27 439, 339.) A lead agency may use a baseline consisting of both existing conditions and projected  
28 conditions that are supported by substantial evidence in the record. (Cal. Code Regs., tit. 14, §

1 15125, subd. (a)(1).) As the SEIR recognizes, “[i]n the typical case, a supplemental EIR would  
2 adopt as its baseline the full build-out of the approved project as analyzed under the prior EIR and  
3 disclose the incremental change in environmental impacts between [the] revised project and the  
4 prior approved project, regardless of whether the project has been fully constructed.”

5 78. Under this approach, the baseline for the Revised Project should be the Original  
6 Project as approved, assuming full implementation of all mitigation measures included in the  
7 2008 EIR. The full build-out of the Original Project is a realistic baseline that would give the  
8 public and decision makers the most accurate picture of the Revised Project’s environmental  
9 impacts. Indeed, in its Response to Comments, the Port calculated the China Shipping Terminal’s  
10 annual air pollutant emissions under a full build-out of the Original Project and under the Revised  
11 Project, demonstrating its realistic ability to determine the incremental change in air quality  
12 impacts between the two.

13 79. However, the SEIR utilizes a baseline consisting only of actual 2008 conditions.  
14 Pursuant to the 2008 EIR, implementation of the air quality mitigation measures incorporated into  
15 the Original Project was intended to be phased in over time, making the China Shipping  
16 Terminal’s operations progressively cleaner. As such, the selected baseline does not represent the  
17 full build-out of the Original Project as analyzed under the 2008 EIR, nor does it disclose the  
18 incremental change in environmental impacts between the Revised Project and the Original  
19 Project.

20 80. The SEIR, which was released in September 2019, assumes Permit 999 would be  
21 amended to include the SEIR’s mitigation measures before the end of 2019. Because the  
22 implementation deadlines for all of the mitigation measures included in the SEIR are triggered by  
23 such a lease amendment, that assumption maximizes the benefits of the SEIR’s mitigation  
24 measures for purposes of the SEIR’s impact analysis.

25 81. As of the date of this Petition, no such lease amendment has been executed and it  
26 is unclear when or whether one will ever be agreed upon. Under the SEIR, until Permit 999 is so  
27 amended, the China Shipping Terminal will continue to operate without full implementation of  
28 the 2008 EIR’s mitigation measures or any implementation of the SEIR’s mitigation measures.



1 The SEIR does not disclose or analyze the Revised Project’s current or future emissions under  
2 this scenario. Thus, the SEIR’s impacts analysis masks the true environmental impacts of the  
3 Revised Project.

4 82. Through the selection of an improper baseline and the improper assumption that  
5 Permit 999 would be amended immediately to incorporate the mitigation measures included in the  
6 SEIR, the SEIR vastly overstates the emissions reductions achieved through adoption of its  
7 mitigation measures and underestimates the benefits of those included in the 2008 EIR, had they  
8 been fully implemented. As a result of these deficiencies, the SEIR does not disclose the  
9 incremental change in environmental impacts between Revised Project and the Original Project.  
10 As such, the SEIR fails to include “a sufficient degree of analysis to provide decisionmakers with  
11 information which enables them to make a decision [that] intelligently takes account of [the  
12 Revised Project’s] environmental consequences.” (Cal. Code Regs., tit. 14, § 15151.)

13 83. Respondents violate CEQA by failing to adequately discuss and analyze the  
14 Revised Project’s significant air quality impacts in the SEIR. (Cal. Code Regs., tit. 14, § 15126.2,  
15 subd. (a).) This failure constitutes a prejudicial abuse of discretion. (Pub. Resources Code, §§  
16 21005(a), 21168.5.)

17 **Failure to Discuss Inconsistencies with Regional Air Quality Plans**

18 (Cal. Code Regs., tit. 14, § 12125, subd. (d))

19 84. An EIR must discuss any inconsistencies between the proposed project and  
20 applicable regional plans, including air quality attainment plans. (Cal. Code Regs., tit. 14, §  
21 12125, subd. (d).)

22 85. Because the SEIR fails to adopt all feasible mitigation measures to reduce the  
23 Revised Project’s significant air quality impacts, it is inconsistent with applicable regional air  
24 quality plans, including:

- 25 a. SCAQMD’s 2016 Air Quality Management Plan is a regional emission  
26 reduction strategy adopted to bring the South Coast Air Basin into attainment with the  
27 national Ambient Air Quality Standards for ozone and fine particulate matter through a  
28 45% reduction in NOx emissions by 2023 and a 55% reduction in NOx emissions by

1 2041. The 2016 Air Quality Management Plan relies on the use of near-zero and zero-  
2 emission technology at the Port to meet its objectives.

3 b. The San Pedro Bay Clean Air Action Plan 2017 Update was adopted by the  
4 Port as a strategy to reduce emissions of air pollutants caused by cargo movement in and  
5 around the Port. In order to meet its air emissions reduction objectives, the San Pedro Bay  
6 Clean Air Action Plan 2017 Update relies on 100% compliance with CARB's At-Berth  
7 Regulation and the utilization of 100% zero-emission cargo-handling equipment by 2030.  
8 It also relies upon the utilization of 100% zero-emissions drayage trucks by 2035.

9 c. SCAQMD prepared a Community Emission Reduction Plan for the  
10 Wilmington/West Long Beach/Carson community because it was identified by CARB as a  
11 disadvantaged community for purposes of AB 617. The Community Emission Reduction  
12 Plan identifies the Port and cargo-handling equipment utilized at the Port as main sources  
13 of air pollutant emissions in the area, and recommends the development of more stringent  
14 rules and regulations, as well as the implementation of incentive programs at the Port, in  
15 order to reduce Port-related air pollution.

16 86. The SEIR's Findings of Fact and Statement of Overriding Considerations states,  
17 without substantial evidence, that the Revised Project implements the San Pedro Bay Clean Air  
18 Action Plan, despite evidence put forth in public comments that the Revised Project conflicts with  
19 the plan.

20 87. Accordingly, Respondents violated CEQA and committed a prejudicial abuse of  
21 discretion by failing to discuss inconsistencies between the Revised Project and applicable  
22 regional air quality plans. (Cal. Code Regs., tit. 14, § 12125, subd. (d); Pub. Resources Code, §§  
23 21005(a), 21168.5.)

24 **Failure to Analyze and Adopt All Feasible Mitigation**

25 (Pub. Resources Code, 21002; Cal. Code Regs., tit. 14, §§ 15021, subd. (a)(2),  
26 15026.4, subd. (a)(1))

27 88. CEQA requires lead agencies to identify and discuss mitigation measures that are  
28 available to lessen each significant environmental effect of a proposed project. (Cal. Code Regs.,

1 tit. 14, § 15126.4, subd. (a)(1).)

2 89. CEQA prohibits public agencies from approving projects if feasible mitigation  
3 measures are available that would substantially lessen the project’s significant environment  
4 effects. (Pub. Resources Code, 21002.) Approval of a project without including such feasible  
5 mitigation measures to avoid or minimize environmental damage violates CEQA. (Cal. Code  
6 Regs., tit. 14, § 15021, subd. (a)(2).)

7 90. A revised project and supplemental EIR are subjected to the same scrutiny as  
8 would be given any proposed project and supporting EIR. (*Napa Citizens for Honest Government*  
9 *v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359.) However, “when an earlier  
10 adopted mitigation measure has been deleted, the deference provided to governing bodies . . .  
11 must be tempered by the presumption that the governing body adopted the mitigation measure in  
12 the first place only after due investigation and consideration.” (*Ibid.*) “The fact that a mitigation  
13 measure had been adopted in an earlier plan, but has been deleted, will be relevant to the question  
14 of the adequacy of the modified EIR, because it identifies a mitigation measure that the modified  
15 EIR then must address.” (*Ibid.*) After a mitigation measure has been adopted, the lead agency  
16 “must state a legitimate reason for deleting [the] mitigation measure, and must support that  
17 statement of reason with substantial evidence. In other words, the measure cannot be deleted  
18 without a showing that it is infeasible.” (*Ibid.*)

19 91. Respondents adopted the air quality mitigation measures in the 2008 EIR over a  
20 decade ago, concluding that they represented “feasible means to reduce air pollution impacts from  
21 proposed operational sources” at the China Shipping Terminal. Respondents violated CEQA by  
22 deleting or weakening mitigation measures AQ-9, AQ-10, AQ-15, AQ-16, AQ-17, AQ-20, and  
23 AQ-23 (as they were referred to in the 2008 EIR) without providing substantial evidence of the  
24 measures’ infeasibility in the SEIR. For example, the Port does not even make a facial assertion  
25 that mitigation measure AQ-15 is infeasible as adopted under the 2008 EIR.

26 92. Moreover, Respondents violated CEQA by approving the Revised Project without  
27 analyzing and adopting all feasible mitigation measures to substantially reduce the Revised  
28 Project’s significant environmental impacts. Additional mitigation measures that would

1 substantially lessen the Revised Project's significant impacts are feasible, including, but not  
2 limited to, the following:

3 a. Mitigation Measure AQ-9: Substantial evidence in the record supports a  
4 fair argument that it is feasible to require that 100% of all ships calling at the China  
5 Shipping Terminal use AMP while hoteling in the Port unless there is an emergency or a  
6 ship is not AMP-capable.

7 b. Mitigation Measure AQ-10: Substantial evidence in the record supports a  
8 fair argument that it is feasible to require that 100% of ships calling at the China Shipping  
9 Terminal comply with the expanded VSRP, reducing their speed to 12 knots or lower  
10 between 40-nautical-miles from Point Fermin and the Precautionary Area.

11 c. Mitigation Measure AQ-15: In the draft supplemental EIR, the Port  
12 determined that 40 of the China Shipping Terminal's 122 yard tractors could feasibly be  
13 replaced with alternative fuel units each year. As such, substantial evidence in the record  
14 supports a fair argument that it is feasible to require full implementation of this measure in  
15 three years, rather than five.

16 d. Mitigation Measures AQ-16 and AQ-17: Substantial evidence in the record  
17 supports a fair argument that it is feasible to require that all cargo-handling equipment  
18 utilized at the China Shipping Terminal be replaced with near-zero or zero-emission  
19 technologies and that the Terminal be retrofitted with all necessary associated  
20 infrastructure within five years of final approval of a further-revised project and  
21 certification of a revised SEIR.

22 e. Mitigation Measure AQ-20: Substantial evidence in the record supports a  
23 fair argument that it is feasible to require the phase-in of zero-emission drayage trucks  
24 used at the China Shipping Terminal. In addition, substantial evidence in the record  
25 supports a fair argument that it is feasible to impose a mitigation fee based on the number  
26 of twenty-foot-equivalent units handled by the China Shipping Terminal, with the  
27 proceeds going toward the subsidization or incentivization of the purchase of zero-  
28 emission drayage trucks and/or the mitigation of community health impacts.





1           b.       Directing Respondents and Real Parties in Interest to suspend any  
2 and all activities pursuant to, or in furtherance of, Respondents' determinations,  
3 findings and decisions related to approval of the Revised Project and certification  
4 of the SEIR, until Respondents have taken all actions necessary to bring the  
5 determinations, findings and decisions into compliance with CEQA;

6           c.       Directing Respondents to fully comply with the requirements of  
7 CEQA with respect to the Revised Project, and to take all other specific actions  
8 that may be necessary to bring Respondents' determinations, findings and/or  
9 decisions into compliance with CEQA.

10          d.       Directing Respondents to vacate their approvals of the amended  
11 Permit 999; and

12          2.       For costs of this suit;

13          3.       For attorneys' fees as authorized in Code of Civil Procedure section 1021.8 and  
14 any other applicable provisions of law; and

15          4.       For such other legal and equitable relief as the Court deems appropriate and just.

16  
17 Dated: November 4, 2020

Respectfully Submitted,

18                   XAVIER BECERRA  
19                   Attorney General of California  
20                   SARAH E. MORRISON  
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                  Resources Board

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**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL**

**Case Name: South Coast Air Quality Management District v. City of Los Angeles, et al.**

**Case No.: 20STCP02985**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On November 4, 2020 , I served the attached **NOTICE OF MOTION AND JOINT MOTION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF LANI M. MAHER AND MATTHEW W. CHRISTEN IN SUPPORT THEREOF; EXHIBIT 1: [PROPOSED] JOINT PETITION FOR WRIT OF MANDATE IN INTERVENTION** by electronic mail addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 4, 2020, at Los Angeles, California.

Beatriz Davalos  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature

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