

BAYRON T. GILCHRIST (State Bar No. 212393)
BARBARA BAIRD (State Bar No. 81507)
VEERA TYAGI (State Bar No. 239777)
KATHRYN ROBERTS (State Bar No. 326693)
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, CA 91765-0940
Telephone: (909) 396-3535
Facsimile: (909) 396-2961

Attorneys for Petitioner
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT

Exempt from filing fee
(Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT, a Public Entity,

Petitioner,

v.

CITY OF LOS ANGELES, a Public Entity;
LOS ANGELES CITY COUNCIL, a Public
Entity; the CITY OF LOS ANGELES
HARBOR DEPARTMENT, a Public Entity; and
the LOS ANGELES BOARD OF HARBOR
COMMISSIONERS, a Public Entity,

Respondents,

) CASE NO. 20STCP02985
)
) Assigned To:
) Department:
)
) **PETITION FOR WRIT OF**
) **MANDATE AND COMPLAINT FOR**
) **DECLARATORY RELIEF**
)
) [Code of Civ. Proc. §§ 1085 and 1094.5;
) Pub. Res. Code § 21000, *et seq.*]
)
) Action Filed: September 16, 2020
) **CEQA**

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.

Pursuant to California Code of Civil Procedure sections 1085 and 1094.5, Petitioner SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (“South Coast AQMD”) brings this action on behalf of itself and the residents of the South Coast Air Basin (“Basin”) in order to enforce the California Environmental Quality Act (“CEQA”) and allege as follows:

INTRODUCTION

1. This action challenges the decisions of the City of Los Angeles, the Los Angeles City Council, the Los Angeles Harbor Department and its Board of Harbor Commissioners (collectively, “Respondents” or “Port of Los Angeles”) to certify the Final Supplemental Environmental Impact Report (the “2020 Final SEIR”) for Berths 97-109, the China Shipping Container Terminal (the “Project” or “terminal”), on August 12, 2020, and to allow for continued operation of the terminal under the revised mitigation measures from the 2020 Final SEIR. This action also challenges the failure of Respondents to implement and enforce the original mitigation measures from a prior 2008 joint Environmental Impact Statement and Environmental Impact Report (the “2008 EIS/EIR”) for the terminal.

2. In 2001, the Port of Los Angeles agreed to construct a terminal for China Shipping. In 2005, the Port of Los Angeles entered into a long-term lease, Permit No. 999, with China Shipping, which at full operation, would allow the terminal to handle approximately 1,551,000 twenty foot equivalent units (“TEUs”) per year, and would generate over 1.5 million truck trips, 234 vessel calls, and 817 train trips per year. The lease allows China Shipping options to extend until the year 2045. In 2019, this terminal was responsible for 17% of the total cargo- as measured by TEUs- that was processed at the Port of Los Angeles.

3. A lawsuit was brought by environmental and community groups, challenging the failure of the Port of Los Angeles to analyze the project specific impacts of this massive terminal. Pursuant to a settlement agreement, Respondents prepared and certified a joint California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”) EIS/EIR document in 2008, which disclosed the terminal would have significant and unavoidable environmental impacts to air quality, aesthetics, biological resources, geology, transportation,

1 noise, and water quality sediments and oceanography. The Port of Los Angeles adopted 52
2 mitigation measures and 3 lease measures to reduce impacts from the terminal.

3 4. While Permit No. 999 has been amended four times, including three times after the
4 certification of the 2008 EIS/EIR, the mitigation measures from the 2008 EIS/EIR were never
5 incorporated into the lease. As a result, China Shipping never implemented at least 10 critical
6 mitigation measures designed to reduce operational air quality impacts, among others.

7 5. Rather than require China Shipping to implement the mitigation measures, the Port
8 of Los Angeles decided to prepare a supplemental environmental analysis to evaluate the
9 unimplemented mitigation measures and a lease measure and to consider modified or replacement
10 measures, among other things (“2020 Final SEIR”). The Final SEIR either minimized the
11 effectiveness or eliminated the 10 mitigation measures and 1 lease measure from the 2008 EIS/EIR.
12 Not surprisingly, as a result, the 2020 Final SEIR determined that the terminal will have significant
13 and unavoidable impacts to air quality from emissions of carbon monoxide (“CO”), volatile organic
14 compounds (“VOC”), and nitrogen dioxide (“NOx”), exceed the cancer risk threshold, and exceed
15 the greenhouse gas threshold, among other impacts. For instance, in 2023, the NOx emissions with
16 full mitigation, will be 8,827 lbs/day, more than double what they were in 2008 and over a 1,000
17 pounds more per day than they would have been if the mitigation measures from 2008 EIS/EIR
18 were implemented.

19 6. Prior to the Board of Harbor Commissioners’ consideration of approval of the 2020
20 Final SEIR, China Shipping submitted a letter to the Port of Los Angeles identifying that they did
21 not intend to implement the new mitigation measures from the 2020 Final SEIR. In spite of this
22 letter, and the comments raised by Petitioners and others raising concern with the analysis, the
23 failure to require stronger mitigation, and the failure to enforce mitigation, the Board of Harbor
24 Commissioners approved the 2020 Final SEIR in October of 2019 without requiring a lease
25 amendment or any other mechanism to enforce the measures. Petitioner and others filed an
26 administrative appeal to the City of Los Angeles City Council. In August of 2020, the City
27 certified the Final SEIR. Again, the Port of Los Angeles has not required a lease amendment to
28 incorporate the mitigation measures into the lease.

1 7. Respondents' actions in failing to implement and enforce the mitigation measures in
2 the 2008 EIS/EIR and approval of unenforceable and inferior substitute measures in the 2020 Final
3 SEIR violate the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000
4 et seq.; and the CEQA Guidelines, Title 14, California Code of Regulations, § 15000 et seq.
5 Respondents further violated CEQA by failing to use a correct baseline; failing to provide an
6 accurate project description; failing to fully analyze project impacts; failing to adequately respond
7 to comments; and by failing to support findings with substantial evidence, among other issues.

8 8. For all of these reasons, Petitioner seeks relief from the failure of Respondents to
9 implement and enforce the mitigation measures and one lease measure from the 2008 EIS/EIR and
10 from Respondents' decision to allow the Project's continued operation under Permit No. 999, and
11 seeks for Respondents' decision to certify the 2020 Final SEIR to be overturned pending a
12 compliant CEQA analysis.

13 **JURISDICTION AND VENUE**

14 9. This Court has jurisdiction to issue writs of mandate under Code of Civil Procedure
15 §§ 1085 and 1094.5 and to issue declaratory relief under Code of Civil Procedure § 1060. Further,
16 this Court has jurisdiction to render judicial determinations and is otherwise authorized to grant the
17 relief prayed for herein.

18 10. Venue is proper in this Court pursuant to Code of Civil Procedure § 394.

19 11. Los Angeles County Superior Court Rule 2.3(a) authorizes the filing of this Petition
20 in the Central District of the Los Angeles County Superior Court.

21 12. On August 12, 2020, the City Council of the City of Los Angeles denied the
22 Petitioner's administrative appeal of the October 8, 2019 decision by the Board of Harbor
23 Commissioners to certify the 2020 Final SEIR. The City filed the Notice of Determination for the
24 project on August 12, 2020 and it was posted on August 17, 2020.

25 13. Petitioner has complied with Public Resources Code § 21167.5 by providing written
26 notice of intent to file this petition for writ of mandate. A copy of the notice is attached as Exhibit
27 A.
28

14. Petitioner is complying with Public Resources Code § 21167.6 and Los Angeles County Superior Court Local Rule 3.232(d)(2)(i) by concurrently filing a notice that the South Coast AQMD is considering election to prepare the administrative record for this action.

15. Petitioner has performed all conditions precedent to filing this action and has exhausted all available administrative remedies to the extent required by law.

16. The maintenance of this action is for the purpose of enforcing important public policies of the State of California with respect to the protection of the environment and public participation under the California Environmental Quality Act. The maintenance and prosecution of this action will confer a substantial benefit upon the public by protecting the public from the environmental and other harms alleged in this Petition. As such, Petitioner is entitled to the recovery of reasonable attorneys' fees under Code Civ. Proc. § 1021.5.

PARTIES

17. Petitioner South Coast AQMD is and was, at all relevant times alleged herein, a regional air quality management district which exists by virtue of and operates under Division 26, Part 3, Chapter 5.5 of the California Health and Safety Code. South Coast AQMD's jurisdiction covers all or major parts of Los Angeles, Orange, Riverside and San Bernardino Counties, and its principal place of business is located in Los Angeles County. Under Health and Safety Code § 40412, the South Coast AQMD is charged with the duty to represent the citizens of the Basin in influencing the decisions of other public and private agencies whose actions might have an adverse impact on air quality in the Basin.

18. Respondent City of Los Angeles is and was, at all relevant times alleged herein, a charter city in the State of California, duly organized and existing under Government Code sections 34000, et seq. The City is a local governmental agency charged with the authority of regulating and administering local land use and development within its territory in compliance with provisions of state law, including CEQA.

19. Respondent City Council of the City of Los Angeles is the duly constituted legislative body of the City of Los Angeles. The City Council is responsible for hearing administrative appeals for decisions made by individual city departments, and is responsible for

1 certain land use decisions and therefore is responsible for ensuring these decisions are made in
2 compliance with applicable laws.

3 20. Respondent Los Angeles Harbor Department, also known as the Port of Los
4 Angeles, is and was, at all relevant times alleged herein, an independent department of the
5 government of the City of Los Angeles. The Port of Los Angeles is responsible for operating the
6 lands in the Harbor District, and is therefore responsible for ensuring that land use decisions are
7 made in compliance with applicable laws. The Port of Los Angeles is the lead agency for the
8 Project under Public Resources Code section 21067, with principal responsibility for conducting
9 environmental review for and approving the Project.

10 21. Respondent, Board of Harbor Commissioners, is and was, at all relevant times
11 alleged herein, a local governmental body created by the City of Los Angeles Charter, with
12 possession, management and control of all navigable waters, and all tidelands and submerged lands
13 comprising the Port of Los Angeles. Therefore, the Board of Harbor Commissioners is charged
14 with the duty of ensuring compliance with applicable laws.

15 22. Petitioner is informed and believes and thereon alleges that Real Party in Interest
16 China Shipping (North America) Holding Co., Ltd. is a corporation organized and existing under
17 the laws of the State of Delaware and is the project applicant and tenant of the subject property.

18 23. Petitioner is informed and believes and thereon alleges that Real Party in Interest
19 Cosco Shipping (North America), Inc. is a corporation organized and existing under the laws of the
20 State of California and is the project applicant and tenant of the subject property. Because the
21 Notice of Determination filed for the Project lists a project applicant's name as China Cosco
22 Shipping Corporation Limited, Petitioner is also naming that entity as a Real Party in Interest
23 pursuant to Public Resources Code section 21167.6.5(a).

24 24. Petitioner is informed and believes and thereon alleges that Real Party in Interest
25 West Basin Container Terminal LLC is a corporation organized and existing under the laws of the
26 State of Delaware and is the project applicant and tenant of the subject property.

27 25. Petitioner is informed and believes, and thereon alleges, that the respondents and
28 real parties in interest sued herein as DOES 1 through 50, inclusive, the true identities of whom

petitioners are at this time ignorant, are in some way responsible for the acts and omissions complained of in this petition.

STATEMENT OF FACTS

Project Background and Environmental Review

26. The Port of Los Angeles is a leading seaport in North America, as measured by shipping container volume and cargo value, and is a critical hub for facilitating trade with China.

27. Along with the Port of Long Beach, it handles up to 64% of all shipping on the West Coast and about 35% of all shipping in the United States.

28. China Shipping, owned by the Chinese government, is a tenant at the Port of Los Angeles and leases Berths 97-109 for a marine container terminal, through a lease agreement (“Permit No. 999”) between China Shipping (North America) Holding Co., Ltd. (“China Shipping”) and the Port of Los Angeles.

29. While the Port of Los Angeles leases property to over 300 tenants, China Shipping was responsible for 17% of the 9.7 million TEUs that were processed by the Port of Los Angeles in Fiscal Year-ending June 30, 2019.

30. In 1997, the Port of Los Angeles prepared a program level Environmental Impact Report, the West Basin Transportation Improvements Program EIR, to analyze the proposed construction and operations of three separate container terminals: the China Shipping Terminal, the Yang Ming Terminal, and the TraPac Terminal.

31. In March of 2001, the Port of Los Angeles issued a permit to construct to China Shipping for a three-phased project and entered into a lease to occupy the terminal. The lease, Permit No. 999, initially gave China Shipping use of 72.48 acres at Berths 100-102 for operation of the terminal but full construction of all three phases would give China Shipping use of 142 acres at Berths 97-109.

32. In its current form, Permit No. 999 now leases Berths 97-109 to China Shipping for twenty-five years with three five-year options to extend, exercisable by China Shipping, until the year 2045.

1 33. The China Shipping Container Terminal occupies approximately 142 acres of
2 property that was previously mostly undeveloped backlands.

3 34. The construction of the terminal involved three phases of construction and
4 development. Phase I construction included installing four A-frame cranes, wharf improvements,
5 constructing bridge improvements, new backlands construction, and modification to the entry gate.
6 Completion of Phase I allowed for terminal operations to begin in June of 2004. Phase II and
7 Phase III of construction began around 2011 and a majority of the work was completed in 2013.

8 35. West Basin Container Terminal Company operates the terminal on behalf of China
9 Shipping but is also believed to be partially owned by China Shipping.

10 36. Community and environmental groups filed a lawsuit in 2001 in Los Angeles
11 Superior Court to challenge the failure of the Port of Los Angeles to comply with CEQA in
12 approving the terminal.

13 37. On October 30, 2002, the State of California Second District Court of Appeals
14 ordered a partial halt to ongoing construction and operation of Phase I of the Berth 97-109 China
15 Shipping Container Terminal Project. The court ordered the preparation of a project-specific EIR
16 to evaluate the environmental impacts of the China Shipping Container Terminal.

17 38. In 2004, the parties entered into an Amended Stipulated Judgment (“ASJ”) to settle
18 the lawsuit.

19 39. Under the terms of the ASJ, the Port of Los Angeles agreed to prepare a project-
20 specific EIR for the China Shipping Container Terminal Project, agreed to mitigation measures,
21 and established a community impact fund.

22 40. The terms of the ASJ also allowed the Port of Los Angeles to complete construction
23 of Phase I of the China Shipping Container Terminal while the EIR was being prepared. Phase I of
24 the construction was completed in 2003 and operations officially began at the terminal on June 21,
25 2004.

26 41. In December of 2008, the Port of Los Angeles certified an Environmental Impact
27 Statement/Environmental Impact Report, prepared in conjunction with the U.S. Army Corps of
28 Engineers, which analyzed the China Shipping Container Terminal (the “2008 EIS/EIR”). A

1 requirement to amend the lease, Permit No. 999, was not made a condition of certification of the
2 2008 EIS/EIR.

3 42. The major elements of the China Shipping Container Terminal that were analyzed in
4 the 2008 EIS/EIR were: constructing a new wharf at Berth 102 and lengthening the wharf at Berth
5 100, with minor dredging to match the West Basin channel depth of -53 feet MLLW (Mean Lower
6 Low Water); the addition of 10 wharf cranes for vessel loading and unloading; installation of shore
7 power, referred to as alternative marine power (AMP), facilities at both berths; the expansion and
8 development of 142 acres of terminal backlands; the construction of container terminal buildings,
9 gate facilities and accessory structures; the construction of two new bridges over the Southwest
10 Slip to connect the Berth 97-109 Container Terminal to the Berth 121-131 Marine Terminal;
11 relocation of the Catalina Express Terminal; and the construction of road improvements in the
12 vicinity.

13 43. The 2008 EIS/EIR assumed that at full capacity, in 2030, the China Shipping
14 Container Terminal Project would handle approximately 1,551,000 TEUs per year. This
15 throughput was assumed to require about 1,500,000 truck trips, 234 vessel calls (with 936
16 associated tugboat operations) and 817 train trips per year.

17 44. By 2030, the terminal operations were expected to occur 350 days per year and 24
18 hours a day and would directly employ 112 workers during the day and 70 workers at night.

19 45. The 2008 EIS/EIR determined the China Shipping Container Terminal Project
20 would have significant and unavoidable adverse environmental impacts to air quality, aesthetics,
21 biological resources, geology, transportation, noise, and water quality sediments and oceanography.

22 46. As a result, the 2008 EIS/EIR included 52 mitigation measures and 3 lease measures
23 to reduce impacts of construction and operation of the China Shipping Container Terminal Project,
24 including 31 mitigation measures targeted towards reducing air quality impacts, including 12
25 measures for construction air quality impacts and 16 measures and 3 lease conditions to reduce air
26 quality impacts from operation.

27 47. The 2008 EIS/EIR identified the lease with China Shipping would be amended to
28 incorporate the mitigation measures.

1 48. China Shipping signed four lease amendments to Permit No. 999 in May 2005,
2 August 2009, July 2010, and April 2011. But China Shipping and the Port of Los Angeles did not
3 incorporate any mitigation measures from the 2008 EIS/EIR into the lease amendments.

4 49. As a result, the Port of Los Angeles did not enforce all of the mitigation measures
5 from the 2008 EIS/EIR and 10 mitigation measures and 1 lease measure were either not
6 implemented or were only partially implemented, including 6 air quality mitigation measures for
7 project operations, and 1 lease measure that required throughput tracking.

8 50. On or about September 9, 2015, the Port of Los Angeles contacted the South Coast
9 AQMD to inform the South Coast AQMD that some of the mitigation measures from the 2008
10 EIS/EIR were not implemented and the Port of Los Angeles intended to prepare a revised
11 environmental analysis for the China Shipping Container Terminal Project.

12 51. The Port of Los Angeles, China Shipping, and the South Coast AQMD entered into
13 a tolling agreement to toll the statute of limitations from an action arising out of the failure to
14 implement the mitigation measures adopted in the 2008 EIS/EIR.

15 52. On September 18, 2015, the Port of Los Angeles released a Notice of Preparation
16 and Initial Study (“NOP/IS”) for a Supplemental EIR with a 30-day public comment period from
17 about September 18, 2015 to October 19, 2015. The South Coast AQMD submitted a comment
18 letter. A public scoping meeting was held on October 7, 2015.

19 53. The purpose of the analysis was to re-analyze the unimplemented 10 mitigation
20 measures and 1 lease measure and consider modification of the measures or substitute measures; to
21 include an analysis for greenhouse gases; and to evaluate impacts from an increase in throughput
22 from the 2008 EIS/EIR.

23 54. A draft Supplemental EIR was released for public review in June of 2017 and a
24 public hearing was also held that month. Among other things, the analysis weakened mitigation
25 measures designed to reduce emissions from ships and cargo handling equipment and eliminated
26 the mitigation measure to reduce emissions from trucks.

27 55. Based on comments submitted on the draft Supplemental EIR, the Port of Los
28 Angeles prepared a Recirculated Draft Supplemental EIR in September of 2018 and held a public

1 hearing in October of 2018. The primary purpose of the recirculated analysis was to address certain
2 concerns regarding the baseline for analysis, revisions to the transportation analysis, and changes to
3 the compliance dates of mitigation measures and lease amendments from fixed dates to dates
4 triggered by a lease amendment.

5 56. The Recirculated Draft Supplemental EIR identified that the Project would have
6 significant and unavoidable adverse impacts to air quality from emissions of NO_x, VOC, and CO
7 in multiple years, and that air pollutant concentrations of NO₂ and PM₁₀ would exceed federal
8 standards and that NO₂ concentrations would also exceed state standards. The analysis also
9 revealed that the Project would exceed the significance threshold for maximum permissible cancer
10 risk and the South Coast AQMD threshold used by the Port of Los Angeles for GHG emissions.

11 57. On October 7, 2019, China Shipping submitted a comment letter to the Port of Los
12 Angeles, stating they do not intend to implement even the revised mitigation measures and would
13 not pay for any costs associated with them.

14 58. Nevertheless, the Board of Harbor Commissioners certified the Final Supplemental
15 EIR ("Final SEIR") on October 8, 2019. The approval by the Board of Harbor Commissioners did
16 not require that the lease with China Shipping, Permit No. 999, be amended to incorporate the
17 mitigation measures, or include any other mechanism for enforcement of the mitigation measures.

18 59. On December 4, 2019, pursuant to Public Resources Code § 21151(c), the South
19 Coast AQMD filed an administrative appeal to the certification of the Final SEIR by the Board of
20 Harbor Commissioners.

21 60. Three additional administrative appeals were filed by the Natural Resources Defense
22 Council ("NRDC"), San Pedro and Peninsula Homeowners' Coalition, San Pedro Peninsula
23 Homeowners United, Inc., Coalition for Clean Air, Urban and Environmental Policy Institute,
24 Occidental College, Long Beach Alliance for Children with Asthma, and East Yard Communities
25 for Environmental Justice; the Attorney General for the State of California; and the California Air
26 Resources Board.

27 61. A hearing was held before the City Council of the City of Los Angeles on August
28 12, 2020 for the administrative appeals and to give final approval for the Final SEIR. The City

1 Council voted to deny the appeals and to approve the Final SEIR for the China Shipping Container
2 Terminal Project.

3 62. A Notice of Determination was posted on August 17, 2020.

4 63. The South Coast AQMD provided written and oral comments at every phase of the
5 Project approval, expressing concerns on a multitude of issues. Specifically, the South Coast
6 AQMD provided written comments on July 15, 2008, for the approval of the initial EIR, and for the
7 supplemental analysis on October 16, 2015, September 29, 2017, November 30, 2018, October 4,
8 2019, December 4, 2019, and July 16, 2020. Oral comments were provided on October 8, 2019 and
9 August 12, 2020.

10 **Regulatory Background**

11 64. Under the federal Clean Air Act, the United States Environmental Protection
12 Agency (“EPA”) has established national ambient air quality standards (“NAAQS”) for pollutants
13 considered harmful to public health, including fine particulate matter (“PM 2.5”), of which diesel
14 particulate matter (“diesel PM”) is a constituent part, and ozone, or photochemical smog, which is
15 formed in the atmosphere from a reaction involving nitrogen oxides (“NOx”) and volatile organic
16 compounds (“VOCs”) in the presence of sunlight. NOx also contributes to reactions in the
17 atmosphere that form PM 2.5. The shipping terminals at the Port of Los Angeles are a significant
18 source of both diesel PM and NOx emissions from ocean-going vessels, heavy-duty trucks, cargo
19 handling equipment, and rail locomotives.

20 65. The South Coast Air Basin (“Basin”) is designated by EPA as nonattainment for the
21 2006 24-hour and 2012 annual PM2.5 NAAQS with attainment dates in 2019 and 2025,
22 respectively. The Basin failed to meet the 2019 attainment date for the 2006 24-hour PM 2.5
23 standard and is currently developing a new State Implementation Plan revision to demonstrate
24 attainment as expeditiously as possible.

25 66. The Basin is also designated as nonattainment for the 1997, 2008 and 2015 8-hour
26 ozone NAAQS with attainment dates in 2023, 2031, and 2038, respectively.

27 67. Significant reductions of NOx and diesel PM are crucial to meeting the attainment
28 deadlines for ozone and PM 2.5.

1 68. The South Coast AQMD, a political subdivision of California, is “the sole and
2 exclusive local agency within the [Basin] with the responsibility for comprehensive air pollution
3 control.” (Health and Safety Code § 40412.) The South Coast AQMD regulates air quality in
4 major portions of Los Angeles, Riverside, and San Bernardino Counties, and all of Orange County.
5 (Id. § 40410; Cal. Code of Regulations tit. 17 § 60104). The South Coast AQMD is the district that
6 has “primary responsibility for control of air pollution from all sources, other than emissions from
7 motor vehicles.” (Health and Safety Code § 40000.)

8 69. According to the Port of Los Angeles Inventory of Air Emissions-2018, the Port of
9 Los Angeles was responsible for 4.5% of all emissions of NOx and 5.2% of all diesel PM in the
10 Basin.

11 70. The South Coast AQMD’s Multiple Air Toxics Exposure Study (MATES IV),
12 completed in May 2015, concluded that the largest contributor to cancer risk from air pollution is
13 diesel PM emissions, and that the areas around the Port of Los Angeles and the Port of Long Beach
14 are significantly impacted with some of the highest risks from air pollution in the region with a
15 maximum estimated cancer risk of 1,057 in a million.

16 71. The China Shipping Container Terminal is within the Wilmington, Carson, West
17 Long Beach community, which is a disadvantaged community, and was designated by the
18 California Air Resources Board (“CARB”) for inclusion in the first year of the Community Air
19 Protection Program, pursuant to Health and Safety Code section 39711 and Assembly Bill 617
20 (Garcia). Under the program, the community was designated for both air monitoring and the
21 development of an emissions reduction plan due to its high cumulative exposure burden, the
22 presence of a significant number of sensitive receptors (children, elderly, and individuals with pre-
23 existing conditions), and the socioeconomic challenges experienced by its residents. The South
24 Coast AQMD adopted a community emissions reduction plan (“CERP”) in September of 2019.
25 The CERP includes proposed actions to achieve cleaner ships and cargo handling equipment
26 throughout the Port of Los Angeles, including the China Shipping Container Terminal.

27 72. The Basin includes all of Orange County and the non-desert parts of Los Angeles,
28 Riverside, and San Bernardino counties, and is home to nearly 17 million people.

73. The South Coast AQMD provided public comments as an agency with expertise over a natural resource impacted by the Project.

FIRST CAUSE OF ACTION

**(WRIT OF MANDATE-VIOLATION OF THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT; Pub. Res. Code §§ 21000, et seq.)**

a. Respondents failed to implement and enforce the mitigation measures from the 2008 EIS/EIR.

74. Petitioners incorporate in full all preceding paragraphs by this reference with the same force and to the same extent as though set forth at length herein.

75. CEQA creates a mandatory duty for lead agencies to adopt a mitigation monitoring and reporting program for mitigation measures it has imposed to mitigate or avoid significant environmental effects and requires the lead agency to ensure the mitigation measures are implemented in accordance with that program. (CEQA Guidelines § 15097.)

76. Respondents failed to implement and enforce mitigation measures intended to reduce significant environmental impacts analyzed in the 2008 EIR/EIS and included in the adopted Mitigation Monitoring and Reporting Plan.

77. By failing to implement and enforce mitigation measures, the Respondents committed a prejudicial abuse of discretion for which the project approvals must be set aside. (Pub. Res. Code §§ 21005(a), 21168.5.)

b. Respondents used an improper baseline for analysis in the 2020 Final SEIR.

78. Petitioners incorporate in full all preceding paragraphs by this reference with the same force and to the same extent as though set forth at length herein.

79. Establishing an appropriate baseline for analysis is critical to satisfying CEQA's important information disclosure purpose. The baseline serves as the measure from which the significance of a project is determined. (*Citizens for East Shore Parks v. California State Lands Comm.* (2011) 202, Cal.App.4th 549, 557.)

80. Respondents were informed that the 2020 Final SEIR improperly used a baseline by, for example, failing to use a baseline of emissions which assumed the 2008 EIS/EIR mitigation

1 measures had been implemented, and that, among other things, failed to disclose the full impacts of
2 noncompliance with the 2008 EIS/EIR resulting in an inaccurate disclosure of actual impacts,
3 including air quality and cancer risk, from the 2020 Final SEIR.

4 81. By relying on a baseline for analysis that is not supported with substantial evidence
5 in the record, the Respondents committed a prejudicial abuse of discretion for which the project
6 approvals must be set aside. (Pub. Res. Code §§ 21005(a), 21168.5.)

7 **c. The Project description in the 2020 Final SEIR is inadequate and misleading.**

8 82. Petitioners incorporate in full all preceding paragraphs by this reference with the
9 same force and to the same extent as though set forth at length herein.

10 83. CEQA requires that an EIR contain an accurate and complete description of the
11 Project so that decision-makers and the public can properly assess a project's environmental
12 impacts. (CEQA Guidelines § 15124.)

13 84. CEQA also requires that project notices contain an accurate and complete
14 description of the Project. (Pub. Res. Code § 21092; Guidelines § 15094.)

15 85. The 2020 Final SEIR fails to provide a complete description of the Project to allow
16 decision-makers and the public to assess the Project's impacts. For example, the Project fails to
17 analyze the Project's maximum throughput increase as a project element, but analyzes it rather as a
18 change in circumstances surrounding operation. This characterization fails to take accountability of
19 the exacerbated air quality, cancer risk, greenhouse gas, and other environmental impacts that will
20 result from this project change.

21 86. By providing a misleading project description Respondents committed a prejudicial
22 abuse of discretion for which the project approvals must be set aside. (Pub. Res. Code §§
23 21005(a), 21168.5.)

24 **d. Respondents failed to adequately evaluate Project impacts in the 2020 Final**
25 **SEIR.**

26 87. Petitioners incorporate in full all preceding paragraphs by this reference with the
27 same force and to the same extent as though set forth at length herein.
28

1 88. An EIR is an informational document intended to inform agency decision-makers
2 and the public of the significant environmental effects of a project and minimize those significant
3 effects through the implementation of mitigation measures or project alternatives. (Pub. Resources
4 Code §§ 21002, 21061; CEQA Guidelines § 15121.)

5 89. An adequate EIR must evaluate all potentially significant environmental impacts of
6 a proposed project, including all phases of the project; both direct and indirect impacts; and both
7 short-term and long-term impacts. (CEQA Guidelines §§ 15125, 15126, 15126.2.)

8 90. CEQA requires that an EIR be adequate, complete, and evidence a good faith effort
9 at full disclosure. (CEQA Guidelines § 15003(i).)

10 91. Petitioners and others commented that the 2020 Final SEIR failed to adequately
11 evaluate all potentially significant Project impacts including, but not limited to, project specific and
12 cumulative air quality impacts, including cancer risk. For example, Petitioner and others
13 commented that the 2020 Final SEIR failed to evaluate operational air quality impacts without
14 mitigation and failed to analyze the consistency of the Project with the South Coast AQMD Air
15 Quality Management Plan (“AQMP”), the CERP for the Wilmington, Carson, West Long Beach
16 community, or the San Pedro Bay Ports Clean Air Action Plan (“CAAP”).

17 92. By failing to adequately evaluate Project impacts, the Respondents committed a
18 prejudicial abuse of discretion for which the Project approval must be set aside. (Pub. Resources
19 Code § 21168.5.)

20 **e. The 2020 Final SEIR adopts mitigation measures that are inadequate,**
21 **uncertain, and unenforceable.**

22 93. Petitioners incorporate in full all preceding paragraphs by this reference with the
23 same force and to the same extent as though set forth at length herein.

24 94. CEQA requires that adopted mitigation measures be certain and enforceable. (Pub.
25 Res. Code § 21081.6 (b); CEQA Guidelines § 15126.4 (a)(2).)

26 95. The lead agency must ensure that mitigation measures are required by or
27 incorporated into the project. (Pub. Res. Code § 21081.6 (b).)

1 96. Petitioner and others commented that mitigation measures and lease conditions were
2 uncertain and unenforceable in violation of CEQA. By way of example, Respondents failed to
3 require that mitigation measures and lease conditions are enforceable by incorporating the
4 measures into a lease amendment contemporaneously while approving the 2020 Final SEIR, or
5 otherwise identify an alternate mechanism for enforcement of mitigation measures if the lease
6 amendment is not adopted. Petitioner and others expressed concern that correspondence from
7 China Shipping and the prior failure of China Shipping to sign a lease amendment raised concerns
8 that the lease would not be amended to include the measures from the 2020 Final SEIR.

9 97. By approving the Project when mitigation measures are inadequate, uncertain, not
10 legally enforceable, or deferred, the Respondents committed a prejudicial abuse of discretion for
11 which the Project approvals must be set aside. (Pub. Res. Code § 21168.5.)

12 **f. The Mitigation Monitoring and Reporting Program in the 2020 Final SEIR is**
13 **legally inadequate.**

14 98. Petitioners incorporate in full all preceding paragraphs by this reference with the
15 same force and to the same extent as though set forth at length herein.

16 99. CEQA creates a mandatory duty for lead agencies to adopt a mitigation monitoring
17 and reporting program for mitigation measures it has imposed to mitigate or avoid significant
18 environmental effects and requires the lead agency to ensure the mitigation measures are
19 implemented in accordance with that program. (CEQA Guidelines § 15097.)

20 100. The lead agency is required to ensure that all adopted mitigation measures are fully
21 enforceable through permit conditions, agreements, or other measures. (CEQA Guidelines §
22 15126.4(a)(2).)

23 101. Respondents adopted a Mitigation Monitoring and Reporting Program without an
24 identified enforceable mechanism to ensure mitigation actually occurs. Petitioner and others
25 expressed concern that the mitigation measures from the 2020 Final SEIR were not certain to occur
26 based on prior experience with the China Shipping Container Terminal and because Respondents
27 had not identified that the lease was guaranteed to be amended to include the mitigation, and no
28 alternative enforceable mechanism was identified.

1 102. By failing to approve a legally adequate Mitigation Monitoring and Reporting
2 Program that includes enforceable mitigation, Respondents committed a prejudicial abuse of
3 discretion for which the project approvals must be set aside. (Pub. Res. Code §§ 21005(a),
4 21168.5.)

5 **g. The 2020 Final SEIR fails to adopt all feasible mitigation measures and**
6 **improperly rejects mitigation measures without adequate findings.**

7 103. Petitioners incorporate in full all preceding paragraphs by this reference with the
8 same force and to the same extent as though set forth at length herein.

9 104. CEQA establishes a duty on the part of the lead agency to mitigate all significant
10 environmental impacts of a project. (Pub. Res. Code §§ 21002, 21002.1; CEQA Guidelines §
11 15021(a).)

12 105. A lead agency may not approve a project for which there are significant
13 environmental impacts unless the agency makes findings that: (a) mitigation measures have been
14 required of the project which avoid or substantially lessen the significant environmental effects, or
15 (b) mitigation measures are found to be infeasible based on substantial evidence. (Pub. Res. Code
16 §§ 21081(a), 21081.5; CEQA Guidelines §§ 15091(a), (b), 15092(b).)

17 106. The Respondents failed to adopt all feasible mitigation measures in violation of
18 CEQA and failed to make findings, supported by substantial evidence, that said measures were
19 infeasible. For instance, Petitioner and others commented that mitigation measures from the 2008
20 EIS/EIR were in fact still feasible, that additional feasible mitigation measures exist, including
21 measures that had been successfully incorporated at other terminals within the Port of Los Angeles,
22 to reduce impacts to air quality and greenhouse gases, among other areas, which were not required
23 of this Project, and that proposed mitigation measures must be modified to increase enforceability
24 and to result in the maximum feasible emissions reductions, including, but not limited to,
25 mitigation for ship emissions, truck emissions, and cargo handling equipment, as well as
26 consideration of mitigation funds.

107. Respondents made legally inadequate findings to reject the mitigation measures from the 2008 EIS/EIR, and those suggested in public comments, by arguing financial and technological infeasibility, without substantial evidence.

108. By approving the Project when feasible mitigation existed to reduce Project impacts without substantial evidence in the record to support the decision to reject those measures, the Respondents committed a prejudicial abuse of discretion for which the Project approvals must be set aside. (Pub. Res. Code § 21168.5.)

h. The 2020 Final SEIR fails to consider a reasonable range of alternatives and improperly rejects feasible alternatives without adequate findings.

109. Petitioners incorporate in full all preceding paragraphs by this reference with the same force and to the same extent as though set forth at length herein.

110. An adequate EIR must consider a reasonable range of alternatives to the proposed project. The alternatives must be designed to meet basic project objectives and lessen or avoid significant environmental impacts. (CEQA Guidelines § 15126.6 (a).)

111. The discussion of project alternatives shall focus on alternatives to the project which are capable of avoiding or substantially lessening any significant effects of the project, even if those alternatives would impede to some degree the attainment of the project objectives, or would be more costly. (CEQA Guidelines § 15126.6 (b).)

112. A lead agency has a duty to adopt an alternative to the proposed project if said alternative is feasible. (Pub. Res. Code § 21002.)

113. Petitioner and others commented that feasible alternatives to reduce project impacts were not properly analyzed and were rejected based on inadequate findings. These included technological alternatives and project scope alternatives to reduce emissions from sources such as ships, trucks, and cargo handling equipment. As a result, the alternatives analysis failed to consider a reasonable range of alternatives and rejected seemingly feasible alternatives without accurate or substantial evidence in the record.

114. By improperly narrowing the project objectives, by failing to consider feasible alternatives, by considering an unreasonable range of alternatives, and by rejecting alternatives

1 without substantial evidence in the record, the Respondents committed a prejudicial abuse of
2 discretion for which the project approvals must be set aside. (Pub. Res. Code § 21168.5.)

3 **i. The 2020 Final SEIR fails to provide a good faith and reasoned analysis in the**
4 **response to comments.**

5 115. Petitioners incorporate in full all preceding paragraphs by this reference with the
6 same force and to the same extent as though set forth at length herein.

7 116. CEQA provides that a lead agency must provide a written response to major issues
8 raised, that are “in detail giving reasons why specific comments and suggestions were not accepted.
9 There must be good faith, reasoned analysis in response. Conclusory statements unsupported by
10 factual information will not suffice.” (CEQA Guidelines § 15088(c).)

11 117. Petitioner and others provided numerous comments for which the lead agency failed
12 to provide a good faith and reasoned analysis, including but not limited to inadequate and
13 nonresponsive responses to comments raised concerning the feasibility of mitigation measures,
14 including mitigation for ships, cargo handling equipment, and trucks, and the lack of enforceability
15 of air quality and greenhouse gas measures because there was no commitment to a lease
16 amendment, as well as concerns regarding the choice of baseline and consistency with plans, such
17 as the AQMP, CAAP, or the CERP.

18 118. By failing to provide a good faith, reasoned analysis in response to all significant
19 issues raised, the Respondents committed a prejudicial abuse of discretion for which the Project
20 approvals must be set aside. (Pub. Res. Code §§ 21005(a), 21168.5.)

21 **j. The Findings and Statement of Overriding Considerations for the 2020 Final**
22 **SEIR are not supported with substantial evidence.**

23 119. Petitioners incorporate in full all preceding paragraphs by this reference with the
24 same force and to the same extent as though set forth at length herein.

25 120. CEQA requires that prior to approving a project with significant environmental
26 impacts, a lead agency must make a finding, supported with substantial evidence in the record, that
27 “Specific economic, legal, social, technological, or other considerations....make infeasible the
28

1 mitigation measures or project alternatives identified in the final EIR.” (CEQA Guidelines §§
2 15091 (a), (b).)

3 121. CEQA prohibits a lead agency from approving a project without first eliminating or
4 substantially lessening significant environmental impacts. (CEQA Guidelines § 15092.)

5 122. Petitioners and others provided comments that feasible mitigation measures and
6 project alternatives exist to eliminate or substantially lessen the Project’s significant impacts,
7 including impacts to air quality and greenhouse gases. These measures and alternatives were
8 identified in the 2008 EIS/EIR, the 2020 Final SEIR, or were raised in the comment letters.

9 123. The lead agency nevertheless approved the Project without first requiring the
10 adoption of all feasible mitigation measures and project alternatives.

11 124. CEQA requires that a lead agency prepare a statement of overriding considerations,
12 supported by substantial evidence, which balances the project benefits against the unavoidable
13 significant impacts. (CEQA Guidelines § 15093.)

14 125. Many of the project benefits and findings of unavoidable significant impacts are not
15 supported by substantial evidence. For example, Respondents identify a project benefit includes
16 implementation of the CAAP, but Petitioner and others provided substantial evidence that the 2020
17 Final SEIR does not comport with the plan. Also, Petitioner and others provided substantial
18 evidence that mitigation measures and project alternatives were feasible and that other marine
19 terminals had in fact implemented measures that were not required in the 2020 Final SEIR.
20 However, the findings repeatedly assert that no other feasible mitigation measures or project
21 alternatives exist to reduce significant impacts, and that continued operation of the terminal with
22 feasible mitigation was a project benefit.

23 126. By failing to adopt all feasible mitigation measures and project alternatives, the
24 findings are not supportable and must be set aside as an abuse of discretion. (Pub. Res. Code §§
25 21005(a), 21168.5.) Similarly, the Statement of Overriding Considerations relies on purported
26 Project benefits that are not supported with substantial evidence. (Pub. Res. Code § 21168.5.)

27 127. As a result of the foregoing defects, Respondents prejudicially abused their
28 discretion by failing to implement and enforce the mitigation measures from the 2008 EIS/EIR and

1 by certifying the 2020 Final SEIR without ensuring compliance with the requirements of CEQA.
2 As such, Respondents' certification of the environmental review, approval of the Project and any
3 associated approvals, must be set aside.

4 **SECOND CAUSE OF ACTION**

5 **(DECLARATORY RELIEF)**

6 128. Petitioners incorporate in full all preceding paragraphs by this reference with the
7 same force and to the same extent as though set forth at length herein.

8 129. An actual controversy has arisen and now exists between Petitioner and
9 Respondents concerning their respective rights and duties. Petitioner claims that Respondents
10 failed to implement and enforce mitigation measures from the 2008 EIS/EIR and have improperly
11 certified the 2020 Final SEIR in violation of CEQA such that the continued operation of Permit No.
12 999 is a violation of law until compliance with CEQA is achieved. Respondents deny this claim.

13 130. Declaratory relief is proper to review "an actual, present controversy over a proper
14 subject." (Californians for Native Salmon and Steelhead Ass'n v. Dept. of Forestry (1990) 221
15 Cal.App.3d 1419, 1427.)

16 131. Petitioners desire a judicial determination of the rights and duties of the parties, and
17 a declaration that Respondents' actions violate applicable law.

18 132. A judicial declaration is necessary and appropriate at this time so that Petitioner may
19 ascertain its rights and to avoid a continued violation of CEQA.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioners pray for judgment as set forth below:

22 A. For declaratory relief that the approvals made by Respondent are invalid as a matter
23 of law;

24 B. For a peremptory writ of mandate directing:

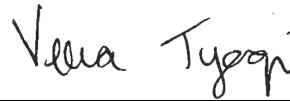
25 a. Respondents to set aside Permit No. 999 pending compliance with CEQA;

26 b. Respondents to set aside the August 12, 2020 decision of Respondents to allow
27 continued operation of the terminal under Permit No. 999 and the certification of the 2020 Final
28 SEIR;

1 c. Respondents to implement and enforce the mitigation measures from the 2008
2 EIS/EIR;
3 d. Respondents to comply with CEQA in any subsequent action taken to allow
4 continued operation of the China Shipping Container Terminal;
5 e. Respondents to vacate and set aside all other approvals for the China Shipping
6 Container Terminal Project;
7 f. Respondents and Real Parties in Interest to suspend all matters under consideration
8 relating to the China Shipping Container Terminal Project, until Respondents have taken all
9 necessary actions to bring any future certifications or approvals into compliance with CEQA.
10 C. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and
11 other provisions of law; and
12 D. For costs of suit; and
13 E. For such other and further relief, including injunctive relief, as the Court deems just
14 and proper.

15 Dated: September 16, 2020

16 By:



BAYRON T. GILCHRIST, General Counsel
BARBARA BAIRD, Chief Deputy Counsel
VEERA TYAGI, Principal Deputy District Counsel
KATHRYN ROBERTS, Deputy District Counsel
Attorneys for Petitioner
SOUTH COAST AIR QUALITY MANAGEMENT
DISTRICT

21
22 **VERIFIED BY OPERATION OF LAW UNDER CODE OF CIVIL PROCEDURE**
23 **SECTION 446.**
24
25
26
27
28

Exhibit A



South Coast Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

Office of the General Counsel
Writer's Direct Dial:
909-396-2306
Fax: 909-396-2963
e-mail: vtyagi@aqmd.gov

September 11, 2020

Via Facsimile, Electronic Mail, and U.S. Mail

City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012
Facsimile: (213) 978-1027
Email: cityclerk@lacity.org

Los Angeles City Council
200 N. Spring Street, Suite 360
Los Angeles, CA 90012
Facsimile: (213) 978-1107
Email: cityclerk@lacity.org

Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-6936
Facsimile: (310) 831-9778
Email: community@portla.org
cc: jsidley@portla.org

Los Angeles Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-6936
Facsimile: (310) 519-0291
Email: commissioners@portla.org

Re: Notice of Commencement of CEQA Action to Challenge Berths 97-109 China Shipping Container Terminal

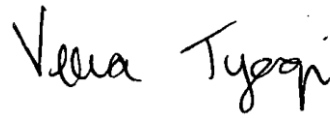
To whom it may concern:

PLEASE TAKE NOTICE, pursuant to Public Resources Code section 21167.5, that the South Coast Air Quality Management District intends to commence an action for writ of mandate against the City of Los Angeles, City Council of the City of Los Angeles, City of Los Angeles Harbor Department, and the Los Angeles Board of Harbor Commissioners, 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. The action challenges the decision, taken on or about August 12, 2020, to approve a Final Supplemental Environmental Impact Report, and all associated approvals, for the China Shipping Container Terminal (L.A. City Council File No 19-1263) and challenges the failure to implement the mitigation measures identified in a 2008 Joint Final

Notice of Intent to Sue
September 11, 2020
Page 2

Environmental Impact Statement/Environmental Impact Report for the above-referenced terminal (State Clearinghouse No. 2003061153).

Sincerely,

A handwritten signature in black ink, appearing to read "Veera Tyagi". The signature is written in a cursive, flowing style.

Veera Tyagi
Principal Deputy District Counsel

VT:cb

TRANSMISSION VERIFICATION REPORT

TIME : 09/11/2020 14:47
NAME : SCAQMD
FAX : 9093962961
TEL :
SER.# : BROJ0J204322

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South Coast Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

Office of the General Counsel
Writer's Direct Dial:
909-396-2306
Fax: 909-396-2963
e-mail: vtvagi@aqmd.gov

September 11, 2020

Via Facsimile, Electronic Mail, and U.S. Mail

City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012
Facsimile: (213) 978-1027
Email: cityclerk@lacity.org

Los Angeles City Council
200 N. Spring Street, Suite 360
Los Angeles, CA 90012
Facsimile: (213) 978-1107
Email: cityclerk@lacity.org

Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-6936
Facsimile: (310) 831-9778
Email: community@portla.org
cc: jsidley@portla.org

Los Angeles Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-6936
Facsimile: (310) 519-0291
Email: commissioners@portla.org

Re: Notice of Commencement of CEQA Action to Challenge Berths 97-109 China

TRANSMISSION VERIFICATION REPORT

TIME : 09/11/2020 14:45
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South Coast Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

Office of the General Counsel
Writer's Direct Dial:
909-396-2306
Fax: 909-396-2963
e-mail: vtvagi@aqmd.gov

September 11, 2020

Via Facsimile, Electronic Mail, and U.S. Mail

City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012
Facsimile: (213) 978-1027
Email: cityclerk@lacity.org

Los Angeles City Council
200 N. Spring Street, Suite 360
Los Angeles, CA 90012
Facsimile: (213) 978-1107
Email: cityclerk@lacity.org

Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-6936
Facsimile: (310) 831-9778
Email: community@portla.org
cc: jsidley@portla.org

Los Angeles Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-6936
Facsimile: (310) 519-0291
Email: commissioners@portla.org

Re: Notice of Commencement of CEOA Action to Challenge Barthe 07-100 China

TRANSMISSION VERIFICATION REPORT

TIME : 09/11/2020 14:43
NAME : SCAQMD
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TEL :
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South Coast Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

Office of the General Counsel
Writer's Direct Dial:
909-396-2306
Fax: 909-396-2963
e-mail: vtvagi@aqmd.gov

September 11, 2020

Via Facsimile, Electronic Mail, and U.S. Mail

City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012
Facsimile: (213) 978-1027
Email: cityclerk@lacity.org

Los Angeles City Council
200 N. Spring Street, Suite 360
Los Angeles, CA 90012
Facsimile: (213) 978-1107
Email: cityclerk@lacity.org

Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-6936
Facsimile: (310) 831-9778
Email: community@portla.org
cc: jsidley@portla.org

Los Angeles Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Facsimile: (310) 831-6936
Facsimile: (310) 519-0291
Email: commissioners@portla.org

Re: Notice of Commencement of CEOA Action to Challenge Berths 97-100 China

From: [Commissioners](#)
To: [Cindy Bustillos](#)
Subject: Read: Notice of Commencement of CEQA
Date: Friday, September 11, 2020 3:01:58 PM

Your message

To: Commissioners
Subject: Notice of Commencement of CEQA
Sent: Friday, September 11, 2020 2:59:10 PM (UTC-08:00) Pacific Time (US & Canada)
was read on Friday, September 11, 2020 3:01:51 PM (UTC-08:00) Pacific Time (US & Canada).

Cindy Bustillos

From: Microsoft Outlook
To: cityclerk@lacity.org; community@portla.org; commissioners@portla.org;
jsidley@portla.org
Sent: Friday, September 11, 2020 2:39 PM
Subject: Relayed: Notice of Commencement of CEQA Action

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

cityclerk@lacity.org (cityclerk@lacity.org)

community@portla.org (community@portla.org)

commissioners@portla.org (commissioners@portla.org)

jsidley@portla.org (jsidley@portla.org)

Subject: Notice of Commencement of CEQA Action