XAVIER BECERRA
Attorney General of California
SARAH E. MORRISON
GARY E. TAVETIAN
Supervising Deputy Attorneys General
TATIANA K. GAUR, State Bar No. 246227
ADAM L. LEVITAN, State Bar No. 280226
LANI M. MAHER, State Bar No. 318637
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: 213-269-6299
Fax: (916) 731-2128
E-mail: Lani.Maher@doj.ca.gov

Attorneys for the People of the State of California and the California Air Resources Board

Exempt from Filing Fees pursuant to Government Code section 6103

SUPERIOR COURT OF THE STATE 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.

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.

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

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

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

The People's and CARB's Joint Motion to Intervene ("Joint Motion") is based on the following grounds:

1. This motion is timely and will not impair or impede the prompt resolution of the issues presented in this action.

2. Under Government Code section 12606, the People, as represented by the Attorney General, have an unconditional right to intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects that could affect the public in general. Such facts are alleged in SCAQMD's lawsuit pending before this Court. Accordingly, the Court should grant the People leave to intervene in this action pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(A).

3. CARB is also entitled to intervene as a matter of right because it has an interest relating to the property or transaction that is the subject of the action, the disposition of this case may impair or impede that interest, and CARB's interests are not adequately represented by the original parties to this action. (Code Civ. Proc., § 387, subd. (d)(1)(B).)

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

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

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

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

INTRODUCTION

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

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

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

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

STATEMENT OF ALLEGED FACTS

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

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

ARGUMENT

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

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

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

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

A. Intervention Is Timely

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

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

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

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

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

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

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

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

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

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

1. CARB Has an Interest in the City's Approval of the Project

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

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

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

2. The Disposition of this Case May Affect CARB's Interests

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

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

3. CARB's Interests Are Not Adequately Represented By Existing Parties

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

II. THE COURT SHOULD PERMIT CARB TO INTERVENE

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

[1] 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.

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

A. CARB's Motion is Timely

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

B. CARB Has a Direct Interest in This Action

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

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

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

C. CARB's Intervention Will Not Enlarge the Issues in the Litigation

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

D. The Reasons for CARB's Intervention Outweigh any Opposition by the Original Parties

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

CONCLUSION

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

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

LA2015950034
63725098.docx

DECLARATION OF LANI M. MAHER IN SUPPORT OF JOINT MOTION FOR LEAVE TO INTERVENE

I, Lani M. Maher, declare as follows:

1. I am a Deputy Attorney General with the California Attorney General's Office in Los Angeles. I have been assigned to represent the People of the State of California, *ex rel.* Xavier Becerra, Attorney General (the "People") in the above-entitled action.

2. I have personal knowledge of the facts set forth below and, if called as a witness, could and would competently testify thereto.

3. On September 16, 2020, Petitioner South Coast Air Quality Management District ("SCAQMD") filed a petition for writ of mandate and complaint for declaratory relief against Respondents the City of Los Angeles, the Los Angeles City Council, the Los Angeles Harbor Department, and the Los Angeles Board of Harbor Commissioners in Los Angeles County Superior Court. The petition alleges violations of the California Environmental Quality Act, Public Resources Code section 21000, et seq.

4. In September 2020, Petitioner SCAQMD notified the California Attorney General's Office of its petition, pursuant to Public Resources Code section 21167.7.

5. The action is still in an early phase. The deadline for certification of the administrative record has not yet been set and the first status conference is scheduled for November 23, 2020. I have been informed by Petitioner's counsel that neither a briefing schedule nor dates for a hearing on the petition have been set in this matter. Given the early stage of the proceedings, the People's and California Air Resources Board's intervention in this action will not prejudice the original parties.

6. Since receiving notice of SCAQMD's petition, the Attorney General's Office has spent considerable time and effort reviewing the petition, evaluating and seeking to verify the factual and legal allegations contained therein, communicating with the parties to fully understand the arguments on both sides, and preparing pleadings seeking to intervene in the action. As such, the People did not unreasonably delay filing their motion for leave to intervene.

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

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

I, Matthew W. Christen, declare as follows:

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

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

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

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

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

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

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

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

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

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

I, Matthew W. Christen, 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 Davis, California.

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

Exhibit 1

XAVIER BECERRA
Attorney General of California
SARAH E. MORRISON
GARY E. TAVETIAN
Supervising Deputy Attorneys General
TATIANA K. GAUR, State Bar No. 246227
ADAM L. LEVITAN, State Bar No. 280226
LANI M. MAHER, State Bar No. 318637
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: 213-269-6299
Fax: (916) 731-2128
E-mail: Lani.Maher@doj.ca.gov
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

SUPERIOR COURT OF THE STATE 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.

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.

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

PEOPLE OF THE STATE OF CALIFORNIA EX REL. XAVIER BECERRA, ATTORNEY GENERAL; and THE CALIFORNIA AIR RESOURCES BOARD,

Petitioner-Intervenors.

INTRODUCTION

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

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

3. Respondents admittedly failed to enforce the implementation of 11 mitigation measures included in the original China Shipping Terminal project ("Original Project") that Respondents approved in 2008 based on the 2008 EIR. In an attempt to cure this failure, Respondents certified the SEIR and approved the Revised Project. In doing so, Respondents removed or weakened the unimplemented measures from the 2008 EIR, including six mitigation measures designed to reduce the Terminal's significant impacts on air quality.

4. Respondents failed to provide substantial evidence that the 2008 EIR's unimplemented mitigation measures were infeasible and that Respondents adopted all feasible mitigation to reduce or avoid the Revised Project's significant impacts on the environment. Moreover, Respondents adopted mitigation measures included in the SEIR that are not fully enforceable. In addition, Respondents' review of the environmental impacts anticipated from the Revised Project utilizes an improper baseline, failing to provide both decision makers and the public with accurate information regarding the Revised Project's impacts on air quality and the health of nearby disadvantaged communities.

5. This is an action against the Respondents for injunctive relief under CEQA. The People and CARB seek a writ of mandate to set aside Respondents' approvals of the Revised Project and certification of the SEIR, and a court order to provide additional environmental review and mitigation in compliance with CEQA.

ALLEGATIONS SUPPORTING INTERVENTION

6. Pursuant to Government Code section 12606, the People, acting through the Attorney General, is entitled to intervene as a matter of right in the above-captioned action initiated by the South Coast Air Quality Management District ("SCAQMD") under CEQA. SCAQMD's petition alleges facts concerning pollution and adverse environmental effects. The Attorney General has an unconditional right to "intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects which could affect the public generally." (Gov. Code, § 12606.)

7. CARB is also entitled to intervene in this action because: CARB has direct interests in the air quality mitigation measures for the Revised Project, the protection of the health

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

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

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

STATUTORY AND REGULATORY REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

34. A mitigation measure, once adopted, can be deleted. However, a lead agency "must state a legitimate reason for deleting an earlier adopted mitigation measure, and must support that statement of reason with substantial evidence." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359.) In other words, "the measure cannot be deleted without a showing that it is infeasible. In addition, the deletion of an earlier adopted measure should be considered in reviewing any conclusion that the benefits of a project outweigh its unmitigated impact on the environment." (*Ibid*.) Ultimately, "[i]f no legitimate reason for the deletion has been stated, or if the evidence does not support the [lead agency's] finding, the [approved project], as modified by the deletion or deletions, is invalid and cannot be enforced." (*Ibid*.)

STATEMENT OF FACTS

General Background

35. The China Shipping Terminal is located in the Port of Los Angeles. In 2014, the Terminal handled 1,088,639 twenty-foot-equivalent units of containerized cargo, requiring 1,109,873 heavy duty drayage trucks, 82 oceangoing container vessel calls, and 379 train trips.

36. The China Shipping Terminal is in close proximity to low income communities and communities of color that are exposed to disproportionately high amounts of air pollution, including the communities of San Pedro, Wilmington, Carson, and West Long Beach. The residents of these communities are already at higher risk of adverse health effects because of exposure to air pollution from Port-related operations.

37. San Pedro and Wilmington, which are the communities nearest to the China Shipping Terminal, have a higher overall exposure to pollution, combined with vulnerability to that pollution, than 95 percent of Californians. Largely because of their close proximity to the Port, these communities are exposed to disproportionately high amounts of air pollution, including ozone and fine particulate matter. For example, the area is in the 96th percentile for diesel particulate matter, which is a form of fine particulate matter produced as exhaust from trucks, trains, ships, and other diesel-powered equipment. Long-term exposure to ozone and fine particulate matter has been linked to an increased risk of adverse health outcomes, including

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

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

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

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

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

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

Permit 999, Original Project, and 2008 EIR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Revised Project and SEIR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

road engine emission rates for particulate matter and NOx.

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

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

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

Approval of the Revised Project and Administrative Appeals

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

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

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

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

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

FIRST CAUSE OF ACTION

(Violations of CEQA)

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

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

68. The Revised Project is a discretionary act subject to CEQA. (Cal. Code Regs., tit. 14, § 15378.)

Failure to Enforce Adopted Mitigation Measures

(Cal. Code Regs., tit. 14, § 15097, subd. (a))

69. Where the lead agency adopts mitigation measures and project revisions identified in an EIR, the lead agency is required to adopt a program for monitoring or reporting on the measures and revisions to ensure they are implemented. (Cal. Code Regs., tit. 14, § 15097, subd. (a).) "[U]ntil mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program." (*Ibid*.)

70. Respondents determined the air quality mitigation measures in the 2008 EIR, including measures AQ-9, AQ-10, AQ-15, AQ-16, AQ-17, AQ-20, and AQ-23 constituted "feasible means to reduce air pollution impacts from proposed operational sources" at the China Shipping Terminal and adopted the measures as part of the Original Project.

71. It is undisputed that each of these measures has not been fully implemented and that Respondents have failed to enforce them.

72. The SEIR, which weakens and removes feasible mitigation measures adopted under the 2008 EIR, fails to meet several requirements of CEQA. As such, Respondents' certification of the SEIR and approval of the Revised Project do not cure their longstanding failure to ensure the implementation of the mitigation measures adopted under the 2008 EIR.

73. Respondents' failure to enforce certain mitigation measures adopted under the 2008 EIR constitutes a prejudicial abuse of discretion in violation of CEQA. (Pub. Resources Code, § 21005.)

Failure to Adequately Identify Existing Environmental Setting

(Pub. Resources Code, § 21083, subd. (b)(3); Cal. Code Regs., tit. 14, § 15125)

74. It is well established that the significance of a project's effects depends on the environmental setting in which the project occurs. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718; Cal. Code Regs., tit. 14, § 15300.2, subd. (a).) Human beings

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

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

Failure to Adequately Disclose and Analyze the Revised Project's Environmental Impacts

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

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

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

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

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

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

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

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

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

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

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

Failure to Discuss Inconsistencies with Regional Air Quality Plans

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

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

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

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

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

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

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

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

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

Failure to Analyze and Adopt All Feasible Mitigation

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

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

tit. 14, § 15126.4, subd. (a)(1).)

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

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

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

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

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

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

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

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

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

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

93. Respondents' conclusions contained in the SEIR's Findings of Fact and Statement of Overriding Considerations that no additional feasible mitigation measures exist to reduce the Revised Project's significant environmental impacts are not supported by substantial evidence. (Cal. Code Regs., tit. 14, § 15093.)

94. Respondents violated CEQA and committed an abuse of discretion by failing to analyze and adopt all feasible mitigation measures that would substantially lessen the significant effects that the Revised Project will have on the environment. (Cal. Code Regs., tit. 14, § 15021, subd. (a); Pub. Resources Code, § 21168.5.)

Failure to Ensure Mitigation Measures are Enforceable

(Pub. Resources Code, § 21081.6, subds. (a)(1), (b);

Cal. Code Regs., tit. 14, §§ 15091, subd. (d), 15097, subd. (a), 15126.4, subd. (a)(2))

95. The SEIR briefly discusses the Port's failure to enforce the mitigation measures included in the 2008 EIR, explaining that "China Shipping did not sign an amendment to the lease that incorporated the mitigation measures related to operation of the Terminal, and as a result the Port was unable to ensure implementation of those measures."

96. Yet, the implementation deadlines for air quality mitigation measures AQ-9, AQ-10, AQ-15, and AQ-17, which were included in the SEIR and adopted as part of the Revised Project, are contingent on the execution of an amendment to Permit 999 that incorporates the measures.

97. It is uncertain when or whether such an amendment will be executed. There is no provision in Permit 999 requiring China Shipping to agree to an amendment incorporating additional mitigation measures. Moreover, China Shipping was not party to the Amended Stipulated Judgment. The SEIR contains no deadline for such an amendment, nor an alternative enforcement mechanism should China Shipping refuse to amend the lease. In fact, in addition to its prior refusal to amend Permit 999 to include the mitigation measures adopted under the 2008 EIR, China Shipping expressly stated that it is now unwilling to include the mitigation measures adopted under the SEIR in Permit 999 unless the Port fully funds the implementation of the measures. The Port has no intention to do so.

98. Approval of the Revised Project was not conditioned upon the successful negotiation of an amendment to Permit 999 incorporating the mitigation measures included in the SEIR.

99. In addition, the SEIR does not include a sufficient mitigation monitoring or reporting program to ensure that the mitigation measures adopted are implemented in accordance with the applicable requirements and implementation deadlines. (Cal. Code Regs., tit. 14, § 15097, subd. (a).) Such monitoring is necessary to ensure that feasible mitigation measures are actually implemented as a project condition and not merely adopted and then neglected or disregarded. The mitigation monitoring and reporting program adopted under the SEIR is virtually identical to that adopted under the 2008 EIR, providing no indication that the new program will be any more effective at ensuring full implementation of the mitigation measures included in the SEIR. Furthermore, the throughput tracking requirement adopted under the 2008 EIR has been terminated under the SEIR, providing the public with even less transparency regarding the China Shipping Terminal's impacts on public health and the environment.

100. Respondents violated CEQA and committed a prejudicial abuse of discretion by failing to ensure the mitigation measures adopted under the SEIR as part of the Revised Project are fully enforceable. (Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(2); Pub. Resources Code, § 21168.5.)

101. Respondents' actions certifying the SEIR and approving the Revised Project in violation of CEQA are arbitrary and capricious, without evidentiary support, a prejudicial abuse of discretion, and are not in accordance with law. Because Respondents failed to comply with CEQA, approval of the Revised Project and certification of the SEIR should be set aside.

PRAYER FOR RELIEF

The People and CARB pray for judgment as set forth below:

1. For peremptory or alternative writs of mandate under Code of Civil Procedure section 1094.5 or, in the alternative, section 1085, and Public Resources Code section 21168.9:

a. Directing Respondents to set aside every determination, finding and decision approving the Revised Project and certifying the SEIR;

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

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

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

2. For costs of this suit;

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

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

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 Intervenors the People of the State of California and the California Air Resources Board

LA2015950034
63725099.docx

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:

Janna B. Sidley
Justin M. Houterman
John T. Driscoll
E-Mail: jsidley@portla.org
E-Mail: jhouterman@portla.org
E-Mail: jdriscoll@portla.org
Attorneys for Respondents: City of Los Angeles; Los Angeles City Council; City of Los Angeles Harbor Department; Los Angeles Board of Harbor Commissioners

Amrit S. Kulkarni
Julia L. Bond
Shaye Diveley
E-Mail: akulkarni@meyersnave.com
E-Mail: jbond@meyersnave.com
E-Mail: sdiveley@meyersnave.com
Attorneys for Respondents: City of Los Angeles; Los Angeles City Council; City of Los Angeles Harbor Department; Los Angeles Board of Harbor Commissioners

Dennis Ehling
Matthew Thomas
Julianna Simon
E-Mail: ehling@blankrome.com
E-Mail: mthomas@blankrome.com
E-Mail: jmsimon@blankrome.com
Attorneys for Real Parties in Interest: China Cosco Shipping Corporation Limited; Cosco Shipping (North America), Inc.; China Shipping (North America) Holding Co. Ltd.

Joseph Walsh
Ellen McGlynn
E-Mail: joe.walsh@cwn-law.com
E-Mail: ellen.mcglynn@cwn-law.com
Attorneys for Real Party in Interest, West Basin Container Terminal LLC

**Service List Continues on Next Page*

Bayron Gilchrist
Barbara Baird
Veera Tyagi
Kathryn Roberts
E-Mail: bgilchrist@aqmd.gov
E-Mail: bbaird@aqmd.gov
E-Mail: vtyagi@aqmd.gov
E-Mail: kroberts@aqmd.gov
Attorneys for Petitioner, South Coast Air Quality Management District

On November 4, 2020, I served the attached **NOTICE OF MOTION AND JOINT MOTION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES; ECLARATIONS OF LANI M. MAHER AND MATTHEW W. CHRISTEN IN SUPPORT THEREOF; EXHIBIT 1: [PROPOSED] JOINT PETITION FOR WRIT OF MANDATE IN INTERVENTION** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Michael N. Feuer
Janna B. Sidley
Justin M. Houterman
John T. Driscoll
Office of the City Attorney of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90731
Attorneys for Respondents: City of Los Angeles; Los Angeles City Council; City of Los Angeles Harbor Department; Los Angeles Board of Harbor Commissioners

Amrit S. Kulkarni
Julia L. Bond
Shaye Diveley
Meyers, Nave, Riback, Silver & Wilson
707 Wilshire Blvd., 24th Floor
Los Angeles, CA 90017
Attorneys for Respondents: City of Los Angeles; Los Angeles City Council; City of Los Angeles Harbor Department; Los Angeles Board of Harbor Commissioners

Dennis Ehling
Matthew Thomas
Julianna Simon
Blank Rome LLP
2029 Century Park E.
Los Angeles, CA 90067
Attorneys for Real Parties in Interest: China Cosco Shipping Corporation Limited; Cosco Shipping (North America), Inc.; China Shipping (North America) Holding Co. Ltd.

Joseph Walsh
Ellen McGlynn
Collier Walsh Nakazawa, LLP
1 World Trade Center, Suite 1860
Long Beach, CA 90831
Attorneys for Real Party in Interest, West Basin Container Terminal LLC

**Service List Continues on Next Page*

Bayron T. Gilchrist
Barbara Baird
Veera Tyagi
Kathryn Roberts
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
Attorneys for Petitioner, South Coast Air Quality Management District

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

LA2015950034
63724535.docx