

**CITY OF LOS ANGELES**  
**INTER-DEPARTMENTAL MEMORANDUM**

DATE: June 2, 2020

TO: Honorable City Council  
c/o City Clerk Room 395

FROM: EUGENE D. SEROKA  
Executive Director, Harbor Department

**SUBJECT: SUPPLEMENTAL RESPONSES TO COMMENTS TO ENVIRONMENTAL IMPACT REPORT: CHINA SHIPPING – COMMENTS CONTAINED IN THE LETTERS TO COUNCIL FROM THE NATURAL RESOURCES DEFENSE COUNCIL, THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, THE CALIFORNIA AIR RESOURCES BOARD, AND THE CALIFORNIA STATE ATTORNEY GENERAL**

Four parties, the Natural Resources Defense Council, et al. (NRDC), the South Coast Air Quality Management District (SCAQMD), the California Air Resources Board (CARB), and the Attorney General of the State of California (Attorney General) submitted appeal letters with additional comments to the Final Supplemental Environmental Impact Report. A summary of responses to key comments are below.

***A. Air Quality Impacts – Past and Future Excess Emissions***

NRDC has asked that the Harbor Department disclose, analyze, and provide mitigation for what it calls 1) “past excess emissions” that were caused from failure to comply with the 2008 EIS/EIR mitigation measures and 2) “future excess emissions” caused by the Revised Project as compared to what would be required under the 2008 EIS/EIR approved project and mitigation measures. These types of analyses go beyond what CEQA requires because this SEIR is limited to evaluating the potential impacts that would occur in the future from modifying mitigation measures of the Revised Project. Nevertheless, the SEIR provides the information requested by the NRDC as detailed in Master Response #5 in the Responses to Comments in Chapter 2 of the Final SEIR (see also Appeal Responses Report Sections III (A) (1) and (2) of Attachment 1). Table MR-5 in Master Response #5 summarizes the “past excess emissions” and “future excess emissions” which shows annual increases and decreases for criteria pollutants for each study year. For future years from 2036 through 2045, the results are all negative for criteria pollutants meaning there would be no “future excess emissions” on an annual basis during this timeframe. Feasible mitigation that can be implemented was incorporated into the analysis and no additional feasible mitigation is available for the impacts of the Revised Project (past, present or future) nor would mitigation be required for “future excess emissions” that show negative results.

## ***B. CEQA Baseline***

The Recirculated Draft SEIR used 2008 as the CEQA baseline because it is the same year in which the prior EIR was certified and the original project was approved. This year reflects the earliest possible date before mitigation measures came into effect and captures the period of time when non-compliance of certain mitigation measures began. The SEIR evaluates the effect of revising mitigation measures described as the Revised Project by comparing what the effect of those changes would be in the future to the 2008 baseline. This is fully compliant with CEQA. NRDC, however, disagrees and suggests that the baseline should be pre-project conditions going as far back as 2000-2001 before the terminal was redeveloped. NRDC also suggests that the analysis of “past and future excess emissions” be used as the baseline approach for every study year analyzed in the SEIR. The Harbor Department analyzed seven study years (2012, 2014, 2018, 2023, 2030, 2036, and 2045) which means that NRDC is asking for seven different baselines to be used in the SEIR plus the 2000-2001 pre-project conditions baseline for a total of eight. This approach would not only depart from the standard practice under CEQA as explained in the Appeal Responses Report (see Section III (B) of Attachment 1) but would also not properly disclose the effect of revising mitigation measures which is the entire purpose of the SEIR.

## ***C. Feasibility of 2008 Mitigation Measures***

NRDC claims that the Harbor Department failed to demonstrate that the 2008 EIS/EIR mitigation measures are infeasible. CEQA requires mitigation measures to be feasible within a reasonable period of time rather than hoped for or expected to be feasible sometime during the life of the project. The Harbor Department provided substantial evidence regarding feasibility of the revised mitigation measures which is based not only on economic considerations, but also on evidence that certain measures are infeasible due to environmental, legal, social or technological factors. NRDC continues to assert that they are feasible and that the Harbor Department has failed to adopt new mitigation measures—such as zero-emissions trucks and cargo handling equipment—that they say have been feasible since 2008. As detailed in the Appeal Responses Report (see Sections III (C) (1), (2), and (3) of Attachment 1) and in Responses to Comments in Chapter 2 of the Final SEIR, our main points regarding infeasibility are summarized as follows:

- The Harbor Department relied on economic infeasibility for mitigation measure MM AQ-15, concerning yard tractors and parts of MM AQ-17 concerning select yard equipment (i.e., toppicks, sidepicks, forklifts, and Rubber-Tired Gantries). In addition to providing cost estimates for replacement of equipment and infrastructure requirements, China Shipping informed the Harbor Department that replacement of equipment with remaining useful life would have been prohibitively expensive, resulting in stranded assets that retain economic value.
- MM AQ-20 requiring LNG drayage trucks to serve the China Shipping terminal is operationally infeasible because individual terminals have little or no control over drayage, which is managed by other parties. The SEIR points out that the solution to moving drayage to cleaner trucks must be port-wide and not the responsibility of any one single terminal.

- LM AQ-23 is a lease measure to track TEU throughput at the terminal and apply additional air quality mitigations if the TEU volumes exceed what was studied in the 2008 EIS/EIR for years 2010, 2015, 2030, and 2045. This lease measure is not mitigation under CEQA to reduce significant impacts nor is it required to be in a Mitigation Monitoring and Reporting Program. The SEIR already takes into account the maximum capacity of the terminal and growth in TEU volume and applies all feasible mitigation measures to address air quality impacts, including requirements for the cleanest available equipment. Furthermore, the SEIR contains LM AQ-1, which provides a process where new technologies will be considered at the time of purchase or replacement, resulting in additional air quality benefits in the future. As such, periodic reviews of throughput is unnecessary.
- With regard to adopting new mitigation measures—such as zero-emissions trucks and cargo handling equipment, the Harbor Department provided an in-depth analysis of the current feasibility status of these technologies in Master Response #2 in Chapter 2 of the Final SEIR. That analysis revealed that while zero-emission technologies are promising, they require longer-term evaluations and real-world fleet testing to become commercially viable. The SEIR includes lease measures LM AQ-1 (cleanest available cargo handling equipment) and LM AQ-3 (demonstration of zero emissions equipment) that were specifically designed to integrate these systems into terminal operations when commercial viability is achieved and operational feasibility is ensured. At this time, the Harbor Department cannot either mandate zero-emission technologies as mitigation measures for the Revised Project or take credit for implementing such measures if they are not feasible under CEQA.

#### ***D. Enhanced Mitigation Monitoring and Enforceability***

The Harbor Department’s Supplemental Mitigation Monitoring and Reporting Program (MMRP) is designed to monitor and verify compliance with the adopted mitigation measures and lease measures. The Harbor Department has established a mitigation monitoring team that will track compliance with mitigation measures and will provide regular status reports to the BOHC as has already been done for other terminals. NRDC’s call for an enhanced enforcement program requiring a third party to oversee the monitoring and reporting process and a fully-funded permanent and independent oversight committee to audit the implementation of all mitigation measures throughout the Port of Los Angeles, is not necessary. SCAQMD contends that the Final SEIR does not bind the tenant to implement mitigation measures and lease measures, and suggests a lease amendment should have been considered by the BOHC at the same time as certification of the Final SEIR to make the measures legally binding. The MMRP is a legally binding requirement of a new lease to be negotiated with China Shipping, which is a separate action subject to BOHC approval. If there is ultimately no new lease, the revised project will not be implemented. Refer to the Appeal Responses Report (see Sections III (D) and IV (B) of Attachment 1).

#### ***E. Mitigation Fee Program***

SCAQMD reiterates a prior comment that the Harbor Department establish a mitigation fee program as a mechanism to obligate the tenant to agree to implement the required mitigation measures if a lease amendment does not occur. SCAQMD suggests the mitigation fee program

can be used to incentivize and accelerate turnover of trucks and cargo handling equipment to be zero emissions and make that program available to all tenants at the Port of Los Angeles, including China Shipping. There are two ways to implement this request – either through a lease amendment or through the Port’s Tariff No. 4, which establishes certain rules and regulations within port boundaries. If the tenant is unwilling to agree to implement revised mitigation measures under a new lease amendment, they would also not likely agree to a lease amendment that contains a penalty or fee for non-compliance with mitigation measures. The Harbor Department’s leasing policy does not include any provisions for penalties or fees associated with non-compliance with mitigation measures or environmental standards. The Tariff likewise contains no provision for such penalties or fees, and is unsuitable for imposing them on a single terminal, since the Tariff applies generally to all terminals at the Port. As such, a Port-wide mitigation fee program via an amendment to the Tariff cannot be used in connection with this SEIR or approval of the Revised Project for the China Shipping Container Terminal. Refer to the Appeal Responses Report (see Section IV (C) of Attachment 1).

### ***F. Statement of Overriding Considerations***

The Board of Harbor Commissioners (Board) found that the benefits of approving the Revised Project outweigh the significant environmental effects and made specific findings when it adopted a Statement of Overriding Considerations. Overriding considerations must balance the merits of approving a project despite its significant environmental effects. For example, the Board weighed the cost of not approving the Revised Project which could result in more than 800 jobs being displaced and would delay implementation of environmental protection measures if the China Shipping terminal had to be shut down. The NRDC disagrees with the findings; however, that is not a reason to overturn the Board’s decision. Refer to the Appeal Responses Report (see Section III (E) of Attachment 1).

### ***G. Community Emissions Reduction Plan for the Wilmington-Carson-West Long Beach Community***

CARB identifies the Wilmington-Carson-West Long Beach area as a disadvantaged community due to high levels of air pollution for which the SCAQMD has prepared a Draft Community Emissions Reduction Plan (CERP). Although CARB acknowledges the plan has not yet received final approval, they claim if the Revised Project is inconsistent with this plan “then LAHD must disclose the inconsistency and any associated impacts with the inconsistency, and adopt all feasible mitigation measures to mitigate such inconsistencies”. CEQA does not require that an EIR discuss either the consistencies or inconsistencies of a proposed project with any plan that has not yet been formally adopted. Nevertheless, the Harbor Department has concluded that the Revised Project is consistent with the CERP as it relates to emission reduction actions from port sources, including 1) reducing emissions from ships and harbor craft and 2) reducing emissions from port equipment and drayage trucks. Refer to the Appeal Responses Report (see Section V (A) (1) of Attachment 1).

### ***H. Disadvantaged Communities and Environmental Justice***

CARB is urging the City Council to ensure that the Revised Project does not adversely impact neighboring disadvantaged communities. As stated in the Final SEIR, the Harbor Department is

committed to addressing impacts created by Port operations on surrounding communities and their residents. As a result of the “Tra-Pac Memorandum of Understanding”, the Port established a trust fund, known as the Port Community Mitigation Trust Fund (PCMTF), to alleviate the environmental and public health impacts of its business operations on the community. The Harbor Community Benefit Foundation (HCBF), a nonprofit organization was created in 2011 to manage the PCMTF and according to HCBF’s website, approximately \$6.3 million in funding has been distributed in grants to 71 community organizations for a variety of projects related to air quality, health risk, and land use. In addition, the Harbor Department contributes 10 percent of its operating income annually in local public infrastructure improvement projects. The Port has already invested \$600 million between 2005 and 2015, and will invest another \$400 million between 2015 and 2025, through the Public Access Investment Plan, for a total investment of \$1 billion dollars. Funding is used to maintain existing and new public access projects, as well as provide public benefit programs. The Plan also provides Port-related community programs such as educational and workforce development programs. Refer to the Appeal Responses Report (see Section V (A) (2) of Attachment 1).

The Attorney General asserts “a lead agency should consider and discuss environmental justice concerns when evaluating a project under CEQA” and cites to a publication that does not contend that CEQA requires an analysis of environmental justice issues. Rather, it merely describes how established CEQA requirements, such as describing environmental setting and cumulative impacts, can further environmental justice. The SEIR fully complied with these established CEQA requirements by describing the background pollution levels and existing public health risks experienced by communities near the China Shipping Container Terminal, identifying unique sensitivities of those communities to environmental hazards, and analyzing the specific adverse health impacts the Revised Project may have on those communities. Nothing in CEQA requires the SEIR to expand these discussions to include an environmental justice analysis as asserted by the Attorney General. Refer to the Appeal Responses Report (see Section VI (D) (2) of Attachment 1).

## ***I. Impacts on Biological Resources***

The Attorney General raises a new technical issue regarding a mitigation measure relating to whale strikes that was not previously commented on or raised prior to the Boards’ certification of the SEIR and approval of the Revised Project in October 2019. The Attorney General points out that mitigation measure BIO-2 from the 2008 EIS/EIR is identical to mitigation measure AQ-10 in the 2008 EIS/EIR, both requiring 100% compliance with the Port’s Vessel Speed Reduction Program (VSRP). The SEIR determined that 2008 EIS/EIR mitigation measure AQ-10 was infeasible, but is silent as to mitigation measure BIO-2. Based on the findings of the 2008 EIS/EIR, potential impacts to marine mammals from vessels strikes was determined to be less than significant which does not require mitigation under CEQA. Despite this determination, the 2008 EIS/EIR noted that an air quality mitigation measure MM AQ-10 VSRP would further reduce any potential risk to whale strikes and was renamed as a biology mitigation measure MM BIO-2 in the Biology Chapter. Accordingly, revision of MM BIO-2 is required in order to be consistent with MM AQ-10 as revised in the SEIR. The Harbor Department will make a formal change to MM BIO-2 at the conclusion of the City Council appeal process. This revision to MM BIO-2 will not cause any

significant impacts because the 2008 EIS/EIR made a finding that vessels strikes to marine mammals was less than significant requiring no mitigation. Therefore, modifying the VSRP requirement from 100% to 95% is not significant relative to potential impacts to marine mammals. Refer to the Appeal Responses Report (see Section VI (D) (4) of Attachment 1).

Attachment 1: Appeal Responses Report