

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: CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”) APPEAL AND CERTIFICATION OF FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR BERTHS 97-109 (CHINA SHIPPING) CONTAINER TERMINAL PROJECT (APP NO. 150224-504; SCH NO. 2003061153)

SUMMARY:

The Board of Harbor Commissioners (BOHC) certified a Final Supplemental Environmental Impact Report (Final SEIR) for, and approved, the “Revised Project” for the Berths 97-109 China Shipping Container Terminal, which modifies 10 mitigation measures (MMs) and one lease measure (LM) that were previously identified in the joint Environmental Impact Statement/Environmental Impact Report for the China Shipping Container Terminal Project that was approved by the BOHC in 2008 (2008 EIS/EIR). The Revised Project also includes operational changes associated with the terminal's cargo throughput projections that have since been revised in light of new information.

The BOHC decision to certify the Final SEIR and approve the Revised Project has been appealed to the Los Angeles City Council (Council), pursuant to the California Environmental Quality Act (CEQA), Public Resources Code Sections 21000 et seq. Staff requests that the Council deny the appeal and uphold the BOHC decision to certify the Final SEIR and approve the Revised Project.

In this action, the Council will need to independently review and consider the Final SEIR and, if deemed adequate under CEQA, certify the Final SEIR, adopt specific Findings of Fact (FOF) and a Statement of Overriding Considerations (SOC) as modified in the Errata regarding the significant environmental impacts of the Revised Project and MMs to reduce or avoid such impacts, and adopt a Supplemental Mitigation Monitoring and Reporting Program (Supplemental MMRP). Two traffic mitigation measures are the financial responsibility of the City of Los Angeles Harbor Department (Harbor Department). Staff proposes that the other MMs and LMs be the financial responsibility of the tenant, as outlined in the Supplemental MMRP.

RECOMMENDATION:

It is recommended that the Council:

1. Certify that the Final SEIR for the Berths 97-109 China Shipping Container Terminal Project (a) has been completed in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code §21000 et seq.), with the State CEQA Guidelines (14 Cal. Code Regs. §15000 et. seq.), and the City of Los Angeles CEQA Guidelines; (b) was presented to the Council for review and the Council considered the information contained in the Final SEIR prior to approving the Revised Project; and (c) reflects the independent judgment and analysis of the Council, and that all required procedures have been completed;
2. Find that, in accordance with the information contained in the Final SEIR, the Revised Project will have significant environmental effects on air quality and meteorology, greenhouse gas emissions and climate change, and ground transportation as defined by Public Resources Code Sections 21068 and 21082.2, and the State CEQA Guidelines, Sections 15064, 15064.4, 15064.5, and 15382;
3. Find that, in accordance with the provisions of State CEQA Guidelines Section 15091 (a)(1), changes or alterations have been required in, or incorporated into, the Revised Project, which substantially lessens or avoids one or more of the significant adverse environmental impacts identified in the Final SEIR;
4. Find that, in accordance with the provisions of State CEQA Guidelines Section 15091 (a)(3), specific economic, legal, social, technological, or other considerations, make infeasible certain mitigation measures such that some environmental impacts remain significant and unavoidable;
5. Find that, all information added to the Final SEIR after public notice of the availability of the Recirculated Draft Supplemental Environmental Impact Report (Recirculated Draft SEIR) for public review but before certification, merely clarifies, amplifies, or makes insignificant modifications in an adequate Environmental Impact Report and recirculation is not necessary;
6. Find that, in accordance with Public Resources Code Section 21081(b) and State CEQA Guidelines Section 15093, the benefits of the Revised Project outweigh the significant and unavoidable environmental impacts;
7. Adopt the FOF and SOC as modified in the Errata (contained in BOHC Resolution No. 19-9548);
8. Adopt the Supplemental MMRP as required by Public Resources Code, Section 21081.6. The Supplemental MMRP is designed to ensure compliance with the mitigation measures and lease measures adopted to avoid or lessen significant effects on the environment, and identifies the responsibilities of the Harbor Department, as lead agency, to monitor and verify project compliance with those mitigation measures and lease measures;
9. Affirm the BOHC's certification of the Final SEIR and project approval;
10. Deny the appeals submitted by the Appellants on the grounds set forth in the Port of Los Angeles communication dated June 2, 2020;

11. Approve the Revised Project identified in the Final SEIR including all feasible MMs and LMs with consideration of the FOF and SOC, and the Supplemental MMRP; and
12. Direct the Harbor Department Cargo and Industrial Real Estate Division to incorporate by reference the Final SEIR, MMs, LMs, and Supplemental MMRP into any and all lease agreements or assignments encompassed in the approved Revised Project.

BACKGROUND:

In September 2015, the Harbor Department released a Notice of Preparation informing the public that a Supplemental Environmental Impact Report (SEIR) was being prepared for the Berths 97-109 China Shipping Container Terminal. In June 2017, a Draft SEIR was released for public review and comment. Based on public comments, the document was revised, and a Recirculated Draft SEIR was issued in September 2018 for public review and comment. In September 2019, the Final SEIR was completed to address all comments received on the Recirculated Draft SEIR and identify changes made to the document. On October 8, 2019, the BOHC certified the Final SEIR, adopted the Findings of Fact (FOF), Statement of Overriding Considerations (SOC), final Supplemental Mitigation Monitoring and Reporting Program (Supplemental MMRP), and Errata, and approved the “Revised Project” for the Berths 97-109 China Shipping Container Terminal. The Revised Project consists of modifying 10 (ten) of the 52 mitigation measures and 1 (one) lease measure originally approved in the 2008 Environmental Impact Statement/Environmental Impact Report (2008 EIS/EIR) for that terminal, which have not been fully implemented due to their infeasibility. A more detailed description of the Revised Project and the SEIR process and timeline is included in the Executive Director’s Report to the BOHC approved as Resolution No. 19-9548.

DISCUSSION:

Background/Context - On December 18, 2008, the BOHC certified the 2008 EIS/EIR that analyzed the construction and operation of the China Shipping Container Terminal, which occupies approximately 142 acres and has been operational since 2005 with the last phase of construction completed in 2013. The 2008 EIS/EIR was prepared as a result of a lawsuit settled in 2004 through an Amended Stipulated Judgment (ASJ) in which the Harbor Department committed to preparing a new, project-specific EIR for development of the terminal (i.e., the 2008 EIS/EIR) and agreed to several mitigation measures and the establishment of a \$50 million community impact fund.

In certifying the 2008 EIS/EIR, the BOHC adopted an MMRP that imposed 52 mitigation and lease measures, including additional measures beyond those required in the ASJ, to reduce significant construction and operational impacts of the approved China Shipping Container Terminal Project in the areas of aesthetics, air quality, biology, cultural resources, geology, ground water, noise, public services, and transportation. Most of the measures, including all the measures associated with construction and all of the ASJ requirements, have been implemented. Accordingly, those measures and the ASJ requirements are not considered in this Final SEIR.

Of the 52 measures adopted in the 2008 EIS/EIR, 10 MMs and one LM have not been fully implemented for various reasons. A re-evaluation of those measures, based on feasibility, availability of alternative technologies, and the actual need, has indicated that some measures are

unnecessary, others have been superseded by advances in technology, and still others need to be modified to ensure their feasibility. The Final SEIR analyzes certain changes to those measures and discloses the impacts of those potential changes as they would affect the physical environment and operations at the China Shipping Container Terminal. The Final SEIR also examines whether there are any additional feasible mitigation measures that could be adopted to address such impacts. These changes are collectively referred to as the "Revised Project" in the Final SEIR, which is discussed in more detail below.

Description of the Revised Project - The Revised Project evaluated in the Final SEIR proposes to modify or eliminate 10 MMs and one LM from the 2008 EIS/EIR. Specifically, the Revised Project proposes to modify six MMs, and to eliminate four MMs and one LM as follows:

Measures from 2008 EIS/EIR Modified under the Revised Project

- MM AQ-9 Alternative Maritime Power
- MM AQ-10 Vessel Speed Reduction Program
- MM AQ-15 Yard Tractors at Berth 97-106 Terminal
- MM AQ-17 Yard Equipment at Berth 97-106 Terminal
- MM TRANS-2 Alameda and Anaheim Streets
- MM TRANS-3 John S. Gibson Boulevard and 1-110 NB Ramps

Measures from 2008 EIS/EIR Eliminated under the Revised Project

- MM AQ-16 Yard Equipment at Berth 121-131 Rail Yard
- MM AQ-20 LNG Trucks
- LM AQ-23 Throughput Tracking
- MM TRANS-4 Fries Avenue and Harry Bridges Boulevard
- MM TRANS-6 Navy Way and Seaside Avenue

In addition, the SEIR for the Revised Project also adds one new MM and four new LMs as follows:

New Measures Added under the Revised Project

MM GHG-1: LED Lighting

- LM AQ-1: Cleanest Available Cargo Handling Equipment
- LM AQ-2: Priority Access for Drayage
- LM AQ-3: Demonstration of Zero Emissions Equipment

- LM GHG-1: GHG Credit Fund

Transmittal 1 (contained in BOHC Resolution No. 19-9548) includes a comparison of each measure listed above, both as originally approved in the 2008 EIS/EIR and as proposed for modification or elimination under the Revised Project. All other measures (41 out of 52) approved in the 2008 EIS/EIR remain in effect, and are not affected by the Revised Project.

ENVIRONMENTAL ASSESSMENT:

CEQA Lead Agency Responsibilities - The Harbor Department is the CEQA lead agency for the Revised Project. As such, the BOHC was responsible for reviewing and considering the Final SEIR and, at its discretion, certifying that the Final SEIR has been completed in accordance with CEQA, the State CEQA Guidelines, and the Los Angeles City CEQA Guidelines. In doing so, the BOHC found that the information contained in the Final SEIR reflects the independent judgment and analysis of the Harbor Department. Certification of the Final SEIR must precede approval of the Revised Project. Accordingly, the BOHC first independently reviewed and certified the Final SEIR as adequate under CEQA; adopted the specific FOF and SOC as modified in the Errata regarding the significant environmental impacts of the Revised Project and MMs to reduce or avoid such impacts and adopted a Supplemental MMRP. As described in the "Recommendation," above, the Harbor Department recommends that the Council, exercising its independent review, repeat these steps in denying the appeal and upholding the decisions of the BOHC.

The Harbor Department typically implements MMs and other environmental obligations by including them in leases with its tenants. As a subsequent discretionary action, the BOHC will use this Final SEIR when deciding whether and how to implement the Revised Project, which may include entering into a new lease with a tenant or amending the current lease for operations at Berths 97-109 accordingly.

Purpose of the SEIR - A supplemental EIR, as its name implies, supplements an EIR that has already been certified for a project, to address project changes, changed circumstances, or new information that was not known, and could not have been known with the exercise of reasonable diligence at the time the prior document was certified. The purpose of a supplemental EIR is to provide the additional information necessary to make the previously certified EIR adequate for the project as revised. A supplemental EIR does not "re-open" a previously certified EIR or reanalyze the environmental impacts of a project as a whole; the analysis is limited to whether the project changes result in new or substantially more severe significant impacts.

Scope and Content of the SEIR - The Final SEIR incorporates and supplements the 2008 EIS/EIR where mitigation measures and lease measures have been modified or information updated, and where discussion of these changes is necessary to provide sufficient analysis of impacts. Resource areas addressed in the scope of the Final SEIR are limited to Air Quality, Greenhouse Gases and Climate Change, and Transportation. The scope of the Final SEIR was also established based on the Initial Study prepared pursuant to CEQA, comments received during the Notice of Preparation (NOP) review process, and comments received on the Draft SEIR and Recirculated Draft SEIR.

In addition, the Final SEIR, in evaluating the impacts of operation of the terminal under the Revised Project, assumes and analyzes the impacts of an incremental increase in the Terminal's

throughput in future years, compared to the assumptions in the 2008 EIS/EIR. These revised throughput assumptions arise from circumstances surrounding operation of the terminal, which have changed as a result of updated cargo and activity projections. The 2008 EIS/EIR assumed that at full capacity, the China Shipping Container Terminal would handle throughput of approximately 1,551,000 TEUs (twenty-foot equivalent units, a measure of containerized cargo capacity) per year, which is roughly equivalent to 838,380 standard shipping containers per year. Those numbers were based on cargo forecasting performed in 2005. Based on an updated forecast of terminal cargo demand and capacity performed for the Final SEIR, the Harbor Department has estimated that, as presently configured, the terminal's maximum capacity is 1,698,504 TEUs per year and throughput activity at that level will be reached by 2030 under current demand projections. This new estimate of maximum terminal throughput activity is approximately ten percent greater than the estimate used in the 2008 EIS/EIR.

The Final SEIR incorporates modifications and corrections made to the Recirculated Draft SEIR, contains responses to all public comments made on the Recirculated Draft SEIR, and contains records of the public process as further detailed below.

Environmental Documentation Process and Public Involvement - The Revised Project was subject to the required environmental documentation process that included public disclosure as required by CEQA. The procedural steps of the Final SEIR process are described below.

1. Notice of Preparation (NOP). In accordance with the Los Angeles City CEQA Guidelines, Article VI, Section 1.5 and the State CEQA Guidelines, Section 15082, responsible agencies, participating City agencies, and other concerned parties were consulted through an NOP released on September 18, 2015, and public scoping meeting held on October 7, 2015, in the BOHC Room. Two commenters provided oral comments during the scoping meeting and a total of 17 written comment letters were received from various agencies and the public during the comment period, which closed on October 19, 2015.

Copies of the NOP were available for review online at www.portoflosangeles.org, at the Harbor Department Environmental Management Division office, and at the Los Angeles San Pedro Branch and Wilmington Branch Libraries.

2. Draft SEIR. On June 16, 2017, the Draft SEIR was released for a 45-day public review and comment period that was extended by request from commenters for an additional 60 days through September 29, 2017. A public hearing on the Draft SEIR was held on July 18, 2017, in the BOHC room. A total of 34 written and oral comments were received from agencies, organizations, and individuals.

Public notices of the availability of the Draft SEIR was published in six newspapers: Los Angeles Times, Torrance Daily Breeze, Long Beach Press Telegram, Random Lengths, Metropolitan News Enterprise and HOY. Copies of the Draft SEIR were available for review online at www.portoflosangeles.org, at the Harbor Department Environmental Management Division office, and at the Los Angeles San Pedro Branch and Wilmington Branch Libraries.

Based on a number of issues raised in public comments, the Harbor Department decided to revise and recirculate the Draft SEIR. Significant new information was added, as summarized in the next section below, which required a complete recirculation of the entire Draft SEIR.

3. Recirculated Draft SEIR. On September 28, 2018, the Recirculated Draft SEIR was released for a 45-day public review and comment period that ended on November 16, 2018. A public hearing on the Recirculated Draft SEIR was held on October 25, 2018 in the BOHC room. The same public noticing described above was provided. Reviewers were advised that since the entire document was recirculated, new comments must be submitted on the Recirculated Draft SEIR. Although comments received on the prior Draft SEIR are part of the administrative record, they would not require a written response by the Harbor Department in the Final SEIR. A total of 10 written and oral comments were received from agencies, organizations, and individuals. The significant new information added to the Recirculated Draft SEIR included the following:

CEQA Baseline - The Draft SEIR used 2014 (the year before the NOP was issued) as the CEQA baseline. Several comments disagreed with that baseline, alleging that use of a 2014 baseline ignored the period between 2008, when the original China Shipping Container Terminal Project was approved, and 2014 during which some mitigation measures were not fully implemented in a timely manner, and that the appropriate baseline would be the year 2000-2001 as used in the 2008 EIS/EIR. The Harbor Department determined that the appropriate baseline is 2008 (the year of certification of the EIS/EIR for the China Shipping Container Terminal Project) since that approach captures the period in question but avoids revisiting the period between 2000 and 2008, which preceded the certification of the 2008 EIS/EIR that this Final SEIR supplements.

Project Description of the Revised Project - The project description of the Revised Project in the Draft SEIR was revised to include the "Partial Implementation Period" (i.e., the time period after project approval occurred under the 2008 EIS/EIR, during which mitigation measures were in place but not all were being implemented in a timely manner). Three additional study years - 2012, 2014, and 2018 - were added to the analysis, 2012 as the first year when most of the mitigation measures in the 2008 EIS/EIR were to have been in effect, 2014 to coincide with the baseline in the Draft SEIR, and 2018 as the last year before the proposed revised measures in the Revised Project could take effect.

Feasible Mitigation Measures - The mitigation measures that comprise the Revised Project were modified from those analyzed in the Draft SEIR. In most cases, compliance dates have been adjusted to be based on the effective date of a new lease amendment between the Harbor Department and the tenant, rather than fixed calendar dates. In addition, several air quality and greenhouse gas mitigation measures and lease measures have been revised to take into account public comments and the adoption of the 2017 San Pedro Bay Clean Air Action Plan (CAAP).

Transportation Analysis - The analysis of the Revised Project's potential impacts on traffic was modified to include several additional intersections and freeway segments requested by the California Transportation Department in a comment letter on the Draft SEIR.

4. Responses to Comments on Recirculated Draft SEIR. As required by Public Resources Code Section 21092.5, all responsible and trustee public agencies that commented on environmental issues in the Recirculated Draft SEIR were provided with proposed written responses to those

comments 10 days prior to submittal of the Final SEIR to the BOHC for certification. In addition, written responses were provided in the Final SEIR for all public comments received on the Recirculated Draft SEIR, including those that incorporated or resubmitted their prior comments on the Draft SEIR.

5. Final SEIR. In accordance with the Los Angeles City CEQA Guidelines, Article I, and the State CEQA Guidelines, Section 15088, comments received on the Recirculated Draft SEIR were evaluated and significant environmental issues raised therein were responded to in the Final SEIR. In addition, modifications to mitigation measures and lease measures were made based on public comments on the Recirculated Draft SEIR. The comment letters and responses to comments, along with minor modifications and corrections to the Recirculated Draft SEIR were presented in the Final SEIR. The Final SEIR was completed in September 2019.
6. Appeals. Following certification of the Final SEIR by the BOHC, appeals were submitted to Council by the Natural Resources Defense Council, the South Coast Air Quality Management District, the California Air Resources Board and the Attorney General of the State of California. Full and summarized responses to the appeal issues are included in other documents filed with Council as part of this Item.

Findings and Conclusions – The Final SEIR, FOF and SOC, transmitted herewith, identify major findings and conclusions regarding the areas of environmental concern, feasible mitigation measures, and significant unavoidable impacts. The discussion below summarizes the proposed FOF for the Council’s consideration.

1. Areas of Environmental Concern. Through the public environmental review process, the following areas of environmental concern were identified. These potential impacts and others were assessed and discussed in detail in the Final SEIR. The Final SEIR concludes that unavoidable significant impacts would occur if the Revised Project is implemented in the following resource areas: Air Quality and Meteorology, Greenhouse Gas Emissions and Climate Change, and Ground Transportation. In addition, cumulatively significant and unavoidable impacts would also occur in these same resource areas. All available feasible mitigation measures have been incorporated into the Revised Project to reduce significant impacts. However, even with the incorporation of all feasible mitigation measures, impacts on these environmental resources would remain significant and unavoidable.
2. Proposed Mitigation and Lease Measures. In accordance with the provisions of the Los Angeles City CEQA Guidelines, Article I, the State CEQA Guidelines Section 15091, and the information contained in the SEIR, changes or alterations have been required in, or incorporated into the Revised Project which substantially lessen or avoid significant adverse environmental impacts identified in the SEIR. Further, certain mitigation measures and lease measures were modified/strengthened based on public comments received on the Recirculated Draft SEIR. All MMs and LMs can be found in the Supplemental MMRP and would be incorporated as appropriate in real estate entitlements for the proposed Revised Project.
3. Overriding Considerations. Pursuant to Public Resources Code Section 21081(b), no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects unless the agency makes the specific findings

discussed above with respect to each significant impact and finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects. The SOC must identify the substantial adverse environmental impacts that cannot be mitigated or avoided; make recommendations that the project or alternatives, if applicable, be approved as proposed; and the reasons why, if in the opinion of the decision-making body, the project warrants approval despite such consequences or recommendations.

The FOF and SOC that were approved by the BOHC and are recommended by the Harbor Department are transmitted for Council consideration and adoption. The Harbor Department, in recommending the proposed Revised Project for approval, has identified specific environmental, economic, legal, social, technological and other project benefits. In summary, the Revised Project provides the following benefits:

- **Fulfills Harbor Department's legal mandates and objectives.** The Revised Project would fulfill the Harbor Department's legal mandate under the Port of Los Angeles (Port) Tidelands Trust (Los Angeles City Charter, Article VI, Sec. 601; California Tidelands Trust Act of 1911) to promote and develop commerce, navigation and fisheries, and other uses of statewide interest and benefit including industrial and transportation uses and the California Coastal Act (PRC Division 20, Section 30700, et seq.), which identifies the Port and its facilities as a primary economic/coastal resource of the state and an essential element of the national maritime industry and obligates the Harbor Department to accommodate the demands of foreign and domestic waterborne commerce and other traditional water-dependent and related facilities in order to preclude the necessity for developing new ports elsewhere in the state. Further, the California Coastal Act provides that the Harbor Department should give highest priority to the use of existing land space within harbors for Port purposes, including, but not limited to, navigational facilities, shipping industries and necessary support and access facilities. The Revised Project would also meet the Harbor Department's strategic green growth objectives by maximizing the efficiency and the capacity of facilities while applying mitigation measures that adhere to and/or exceed the San Pedro Bay CAAP requirements and raise environmental standards.
- **Implements the San Pedro Bay CAAP.** The Revised Project incorporates many environmental features consistent with the CAAP, and additional mitigation measures and lease measures have been identified through the CEQA findings of the SEIR that meet CAAP requirements and objectives.
- **Implements feasible mitigation measures on the existing China Shipping Container Terminal Project, to replace mitigation measures identified in the 2008 EIS/EIR that have not been fully implemented.** The Revised Project would eliminate some existing mitigation measures that have proved to be infeasible or unnecessary, institute new mitigation measures, and modify other existing measures to enhance their effectiveness. In proposing these changes, the Revised Project would advance the original project objectives of the China Shipping Container Terminal Project to implement pollution control measures consistent with the CAAP, and to maximize the efficiency and capacity of the terminal while, at the same time, raising environmental standards through the application of all feasible mitigation measures. If the existing mitigation measures determined to be infeasible or unnecessary are not revised as proposed by the Revised Project, these project objectives

would be not be advanced as originally intended. Further, environmental impacts identified in the 2008 EIR/EIS would not be addressed despite the availability of new or modified feasible mitigation, as identified in the SEIR. The proposed changes to existing mitigation measures that constitute the Revised Project would enable the China Shipping Container Terminal Project to better meet the original project objectives and address impacts identified in the 2008 EIR/EIS.

- **Allows for continued operation of the China Shipping Container Terminal under feasible mitigation measures, providing economic benefits to the Port and the community.** The Revised Project will allow for the continued operation of the terminal, generating revenues to the Port over the life of the Revised Project. The Terminal is responsible for 17% of the Port's 9.7 million Twenty-Foot Equivalent Units that were processed in Fiscal Year-ending June 30, 2019, providing jobs and funding for environmental improvements. These funds are included in the Harbor Revenue fund for the purposes of operating, maintaining and improving the Port in accordance with the Tidelands Trust. Revenues from operation of the China Shipping Container Terminal also provide for environmental improvements, including incentive programs associated with the CAAP for reduction of truck emissions and advancing clean technology, and support the construction of necessary infrastructure for waterfront commercial and recreational improvements in Wilmington and San Pedro. If the Terminal cannot continue to operate, it could result in more than 800 jobs being displaced and delay implementation of environmental protection measures.

In summary, the Revised Project would allow the Harbor Department to meet its legal mandates to accommodate growing international commerce and would permit the Harbor Department to continue to comply with the CAAP and other measures designed to reduce overall emissions over time. The BOHC found that the benefits of the proposed Revised Project described above outweigh the significant and unavoidable environmental effects and are therefore considered acceptable, and the Harbor Department recommends that the Council, exercising its independent review, also so find, in denying the appeal and upholding the decisions of the BOHC

4. Areas of Controversy on Recirculated Draft SEIR. It is important for the Council to be informed as to the areas of controversy associated with the Final SEIR. The areas of controversy have been identified through oral and written comments received on the proposed Revised Project as part of the environmental review process. The discussion below provides a general summary of the areas that staff believes remain controversial. Specific details on issues raised by commenters and the responses to those comments are included in the Final SEIR.

Commenters on the SEIR have requested:

- Disclosure and follow-up on past non-compliance with previously approved mitigation measures; imposition of fines and penalties for non-compliance; and development of a comprehensive program to monitor and enforce compliance of all approved mitigations and new technologies, including through the formation of an oversight committee. Refer to pages 2-23, 2-52, 2-53, and 2-65 where these issues have been addressed in the Final SEIR.

- More aggressive actions and phase-in schedules to accelerate use of zero-emission vehicles and equipment that are alleged to be currently and/or expected to be commercially available during the life of the Revised Project (the current permit term which ends in 2045). Refer to pages 2-7 and 2-37 where these issues have been addressed in the Final SEIR.
- Maintaining the 2008 mitigation requirements, in particular requirements for 100% compliance with standards for use of alternative maritime power, 100% compliance with the Vessel Speed Reduction Program; and mandatory use of LNG-fueled drayage trucks. Refer to pages 2-34 through 2-36 where these issues have been addressed in the Final SEIR.
- Conversion of the China Shipping Terminal to employ all zero-emissions cargo-handling technology. Refer to page 2-19 where this issue has been addressed in the Final SEIR.
- A mitigation fee fund to support off-Port community improvement projects. Refer to pages 2-60 and 2-93 where these issues have been addressed in the Final SEIR.
- Implementation of various terminal efficiency measures, for example: Reduced rates for zero-emission trucks through a fast-track system; incentives for faster turn times; mandatory increased use of on-dock rail; and various measures aimed at reducing emissions from oceangoing vessels. Refer to pages 2-22, 2-39 through 2-40, 2-62, 2-93, and 2-95 where these issues have been addressed in the Final SEIR.
- Explanation of how the tenant's lease will be amended to incorporate adopted mitigation measures, and what will happen if the tenant does not agree to a lease amendment and the Port is not able to legally enforce adopted mitigation. Refer to page 2-29 where this issue has been addressed in the Final SEIR.

5. SEIR Certification and Revised Project Approval. In light of these findings and conclusions, staff recommends certification of the Final SEIR as having been prepared in accordance with CEQA and its implementing guidelines, and further recommends approval of the Revised Project and adoption of all feasible mitigation measures and lease measures.

6. Implementation of Mitigation. When making the CEQA findings required by Public Resources Code Section 21081 (a), a public agency shall adopt a reporting or monitoring program in accordance with Public Resources Code Section 21081.6 for changes to the proposed project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. A Supplemental MMRP is transmitted for Council consideration and adoption.

7. Record of Proceedings. When making CEQA findings required by Public Resources Code Section 21081(a), a public agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based. These records are in the care of the Director of Environmental Management, City of Los Angeles Harbor Department, 222 W. 6th Street, San Pedro, California 90731.

8. Notice of Determination. If and when the SEIR is certified and the Revised Project is approved, in accordance with Los Angeles City CEQA Guidelines, Article I, and the State CEQA Guidelines Section 15094, a Notice of Determination will be filed with the Los Angeles County and City

Clerks' Offices, and submitted to the State of California Governor's Office of Planning and Research, State Clearinghouse after approval of the Revised Project. Public Resources Code Section 21167(c) provides that any action or proceeding alleging that an EIR does not comply with the provisions of CEQA shall be commenced within 30 days after filing the NOD.

Therefore, the staff of the Harbor Department requests that the Council certify the Final Supplemental Environmental Impact Report and approve the Revised Project.