

1 public health impacts of the Port's operations and facilities. Where adverse aesthetic impacts are
2 found in the China Shipping EIR or future EIRs for port expansion projects, the Port will analyze
3 whether the proposals that are complete as of the time the Notice of Preparation for the EIR is
4 issued by the Port and submitted for the aesthetic mitigation fund would mitigate those impacts
5 and discuss how the proposal would mitigate those impacts. This requirement is terminated once
6 the community aesthetic mitigation funds are fully allocated. Projects to receive funding under
7 this subsection shall fall within the following categories and be prioritized as follows: (i) open
8 space and parks; (ii) landscaping and beautification; and (iii) funding for educational, arts, and
9 athletic facilities consistent with the Tidelands Trust. Proceeds for projects funded under this
10 section shall be divided approximately evenly between projects benefiting San Pedro and
11 Wilmington. Nothing in the foregoing shall alter the Port's obligations under the California
12 Environmental Quality Act.

13 4. Funding Procedures. The following procedures shall be followed until the
14 air quality and community aesthetic mitigation funds are allocated by the Port pursuant to section
15 VIII.B.2 and VIII.B.3, above.

16 a. Any party proposing such funding shall submit a proposal
17 simultaneously to the PCAC and to the Port's Environmental Mitigation Coordinator
18 ("Mitigation Coordinator"). The Mitigation Coordinator shall attempt to work with the applicant
19 to insure that the proposal meets the parameters of this Section of the Stipulated Judgment.

20 b. PCAC Evaluation Process for Aesthetic Mitigation Proposals.

21 (i) Each aesthetic mitigation proposals shall describe its nexus
22 to specific adverse impacts from past or future Port projects, and characterize whether the impact
23 is off or on Port land. As to any aesthetic mitigation proposal submitted to the PCAC before the
24 Effective Date, the party proposing such funding shall prepare and submit an addendum with this
25 information. PCAC shall evaluate the submitted aesthetic mitigation proposals first by the
26 prioritization of categories i, ii, and iii of section VIII.B.3 and then in the order received. The
27 PCAC shall perform in a public process an evaluation to determine whether there is a
28

1 demonstrable nexus between the aesthetic mitigation proposal and a Port project's adverse
2 impacts. The PCAC shall act as quickly as possible on all aesthetic proposals submitted to it.

3 (ii) The Mitigation Coordinator shall categorize all aesthetic
4 mitigation proposals as to whether they (i) are located on or off Port lands per section VIII.B.3;
5 (ii) fall within category i, ii, or iii of section VIII.B.3; and (iii) benefit San Pedro or Wilmington
6 (or both).

7 (iii) Proposals linked to past projects.

8 (a) All proposals that are submitted after the Effective
9 Date of this Amended Stipulated Judgment and that are intended to mitigate the impacts of a past
10 project or projects, as well as all proposals that have already been received by PCAC as of the
11 Effective Date of this Amended Stipulated Judgment and that are intended to mitigate the
12 impacts of a past project, whether through the original proposal or the addendum described in
13 section VIII.B.4.b(i), shall be directed to the PCAC Past EIR Working Group ("Working
14 Group"). The Working Group shall evaluate using CEQA Principles ("CEQA Principles")
15 (defined as assessing the mitigation measure using CEQA standards at 14 Cal. Code Regs. §
16 15370), and determine whether a demonstrable nexus exists between the Proposal and the
17 impacts of the past project. If a demonstrable nexus is not found, the proposal shall be rejected.
18 If a demonstrable nexus is found, the Working Group shall further evaluate the proposal using
19 CEQA Principles to determine whether the proposal is the best measure to mitigate the impact
20 identified. This evaluation shall be documented by the Working Group and forwarded, along
21 with the proposal, to the California State Lands Commission staff ("State Lands").

22 (b) The PCAC shall submit to State Lands for its
23 review all proposals for which the Working Group found a demonstrable nexus to a past Port
24 project and projects along with the Working Group evaluation. PCAC shall request that State
25 Lands provide a written response to the Working Group within 30 days of receipt by State Lands
26 of the submitted proposal. Upon receipt, the Working Group shall evaluate State Lands'
27 response and subsequently shall forward to State Lands (for information) and to PCAC: (1) the
28 proposal; (2) the Working Group evaluation; (3) correspondence with State Lands and (4) any

1 reply or reactions of the Working Group to State Lands' response. PCAC shall then vote to
2 approve the proposal, deny the proposal, or approve the proposal with modifications. The PCAC
3 determination and the Working Group evaluation do not constitute a CEQA determination or
4 otherwise constrain the Port's discretion under CEQA.

5 (c) If the PCAC votes to approve the proposal, it will
6 notify State Lands, ask for the State Lands' comments within 15 days, and request that such
7 comments be submitted to the Board before the Board votes on the proposal in accordance with
8 section VIII.B.4.d below.

9 c. PCAC Evaluation Process for Air Quality Mitigation Proposals.

10 PCAC and the Port's Environmental Mitigation Coordinator shall consult with the Technical
11 Advisory Committee as to air quality mitigation proposals submitted pursuant to section VIII.B.2
12 above. The proposal shall be considered by PCAC, which will recommend approval, denial, or
13 approval with modifications. The Technical Advisory Committee shall consist of one
14 representative with technical expertise regarding air pollution reductions applicable to ports
15 appointed by each of the following entities: (1) the California Air Resources Board; (2) the U.S.
16 Environmental Protection Agency; (3) the South Coast Air Quality Management District
17 (SCAQMD); (4) the Mobile Source Reduction Committee for the South Coast Air Basin; and (5)
18 South Coast Carl Moyer Memorial Air Quality Fund. The members of the Technical Advisory
19 Committee shall serve without compensation and shall meet on a regular basis to advise the
20 PCAC and the Port's Environmental Mitigation Coordinator on how best to utilize the air quality
21 mitigation funds to maximize air quality emission reductions at the Port, including but not
22 limited to the development of requests for proposals and evaluation of proposals submitted for
23 funding. If an agency does not designate a representative to the Committee, the Committee may
24 proceed with participation from the remaining agencies.

25 d. Evaluation of Proposals by the Board of Harbor Commissioners. If
26 the PCAC recommends approval of a funding proposal as referenced above (including any
27 modifications to the proposal which PCAC may recommend), then the proposal shall be
28 forwarded to the Board for consideration. If the proposal is intended to mitigate the impacts of a

1 past project or projects in accordance with section VIII.B.4.b(iii) above, then the Board shall
2 direct staff to evaluate the proposal for implementation including but not limited to any CEQA
3 requirements. Such evaluation shall include a cost estimate of implementation. At a public
4 meeting, after considering the PCAC recommendation, any recommendation of the Technical
5 Advisory Committee on the proposal, and any staff reports on the proposal and the record at the
6 meeting, the Board shall approve, or deny the PCAC recommendation or return the proposal to
7 the PCAC for consideration of modifications. If the Board denies the PCAC recommendation, it
8 shall adopt specific findings explaining such actions. If the Board approves the PCAC
9 recommendation, the project shall be funded; however, if State Lands objected to the approval of
10 the proposal in accordance with section VIII.B.4.b(iii)(c) above, then the Board shall wait 45
11 days after such approval to transfer any funds.

12 e. The Mitigation Coordinator shall prepare a quarterly report to the Board and the
13 PCAC regarding the status of all approved projects and available mitigation funds in the
14 designated account for specific types of mitigation. These funding procedures shall not affect the
15 procedure for approval and funding of mitigation measures with funds other than those provided
16 by the community aesthetic mitigation funds under this Amended Stipulated Judgment, or the
17 Port's ability to use mitigation funds provided by the community aesthetic mitigation funds under
18 this Amended Stipulated Judgment for mitigation related to the China Shipping Project.

19 5. Restrictions on Use of Mitigation Funds. The mitigation funds disbursed
20 by the Port shall not be used for (a) mitigation measures committed to in Section VIIIA of this
21 Judgment; (b) funds already committed to in any prior settlement or other document by the Port
22 or City; (c) funds already budgeted for the current or future fiscal year by the Port or City or in an
23 amount and type allocated for mitigation of Port impacts in prior years; (d) measures identified in
24 future CEQA documents to mitigate impacts from projects not yet approved by the Port, except
25 for aesthetic mitigation measures (although future CEQA documents may consider programs and
26 activities funded pursuant to this provision in the baseline discussion); or (e) used as a substitute
27 for existing budgeted municipal functions or programs. The aesthetic mitigation funds
28 committed to in section VIII.B.3 may be used to mitigate any impacts identified in the China

1 Shipping EIR or future CEQA documents for projects not yet approved by the Port. Funds to be
2 allocated pursuant to this section VIII shall come from Port revenues, and may not come from
3 grants, matching funds, or other sources of funds. The Port's expenditure of monies in this
4 Agreement must be: (a) for programs to mitigate existing or future impacts of Port operations on
5 the surrounding communities; (b) consistent with the State Tidelands Trust and the public trust
6 doctrine; (c) consistent with the Los Angeles City Charter; (d) consistent with the California
7 Coastal Act; and (e) consistent with any other applicable laws and regulations.

8 6. Resolution of Disputes. Any disputes regarding allocation of these
9 mitigation funds shall be resolved by the Arbitrator.

10 C. Reporting Requirements. The Port shall provide quarterly reports to Petitioners
11 setting forth the status of its compliance with Section VIII of this Stipulated Judgment.

12 IX

13 CHANGES TO THE PORT COMMUNITY ADVISORY COMMITTEE

14 A. Continued Existence of PCAC. This Stipulated Judgment shall not become
15 effective until the Board has adopted a resolution providing for continued existence of the PCAC
16 subject to applicable law and for the PCAC to operate under the continued governance of the
17 Board.

18 B. Board Consideration of PCAC Resolutions. This Stipulated Judgment shall not
19 become effective until the Board has adopted a resolution providing that: (a) the Board will
20 consider all resolutions adopted by the PCAC in an expeditious and timely manner; and (b) the
21 Board shall issue a written statement of reasons and appropriate findings for any PCAC
22 resolution rejected by the Board.

23 X

24 NOTICE OF UPCOMING CEQA ACTIONS

25 The Port shall on a monthly basis provide a description of all proposed projects and a
26 schedule for upcoming decisions on port projects to the PCAC and neighborhood councils,
27 including but not limited to issuance of notices of preparation of environmental documents,
28 negative declarations, EIRs and other project approvals, with as much advance notice and

1 description of such proposed projects and CEQA decisions as reasonably possible. The Port
2 shall use its best efforts to provide such monthly notice as to minor exemptions from CEQA, and
3 to ensure that all anticipated projects and CEQA decisions are included in the notice. The Parties
4 understand that some matters may arise after such a monthly notice has been provided, and the
5 fact that a project was not included on such a monthly notice shall not prevent Port staff or the
6 Port Board from taking action on the matter.

7 **XI**

8 **LIMIT ON INTERIM OPERATION OF BERTH 100 AND ADDITIONAL MITIGATION**
9 **PAYMENT IF LIMIT IS EXCEEDED**

10 During the interim period when operation of Phase I of the China Shipping Terminal is
11 allowed pursuant to section V, above, the annual capacity of additional container cargo to be
12 offloaded and handled at Berth 100 shall not exceed 328,000 TEUs per calendar year. If the
13 China Shipping EIR is prepared in less than a calendar year, this capacity limit shall be
14 determined based on the period of time between the effective date of this Judgment and the date
15 that the China Shipping EIR is completed, prorated accordingly. If the container throughput
16 exceeds the agreed-upon capacity, the Port shall make an additional payment to the mitigation
17 fund described in section VIII.B, above, of \$30 per TEU in excess of the cap.

18 The Port shall provide to counsel for Petitioners a quarterly report with supporting
19 documentation of the TEU throughput at Berth 97-109. This quarterly report may be provided on
20 a confidential basis if such confidentiality is requested by the terminal operator, in which case
21 Petitioners shall maintain the confidentiality of the report, and agree if any such document is
22 submitted to the Arbitrator or a court, it shall be submitted under an agreement of confidentiality
23 or under seal.

24 After the Board and City have each certified the China Shipping EIR and issued their
25 respective decisions regarding the use of Berths 97-109, the capacity limit shall terminate.
26 However, if a Petitioner brings a legal action (including required arbitration) challenging the
27 adequacy of the China Shipping EIR or otherwise challenging the legality of the City's or the
28 Port's decisions regarding the use of Berths 97-109, then the capacity limit shall immediately and

1 provisionally be placed back in effect while the action is resolved, and the penalty payment of
2 \$30 per TEU shall be placed into a separate designated account pending the outcome of the
3 litigation. If the action is resolved with a finding that the Port abused its discretion and the abuse
4 was prejudicial, the funds will be paid as additional mitigation as described in section VIII.B
5 above, in approximately equal shares to air quality mitigation and community aesthetic
6 mitigation. Otherwise, the Port will recover and retain these funds.

7 XII

8 ATTORNEYS' FEES IN THIS ACTION

9 A. Petitioners' Fees. The Port has paid Petitioners reasonable attorneys' fees and
10 costs for this Action, based upon reasonable hourly rates, in the amount of \$1,426,000.

11 B. Enforcement. Petitioners shall be entitled to reasonable attorneys' fees and costs
12 incurred in the enforcement of this Judgment, including but not limited to the fees and costs
13 incurred by Petitioners for arbitration pursuant to section VII, when Petitioners are the prevailing
14 party as defined under Code of Civil Procedure section 1021.5. The amount of attorneys' fees
15 and costs to be awarded for enforcement of this Judgment shall be determined either through
16 negotiation or by binding arbitration before the arbitrator.

17 XIII

18 FUTURE COOPERATION BETWEEN THE PORT AND PETITIONERS

19 The Parties agree that this settlement and this Judgment have been reached in the mutual
20 best interests of the Parties. In that spirit, the Parties shall cooperate to implement this Judgment,
21 including the execution and filing of any court papers in this action necessary to implement the
22 terms of this Judgment.

23 In addition, the Parties agree to cooperatively address and respond to any future
24 environmental issue at the Port and in San Pedro and Wilmington. This cooperation may consist
25 of meetings and discussions among the Parties, the purpose of which will be to attempt to
26 coordinate the Parties' efforts at considering or resolving such future environmental issues.
27 Nothing in this section shall limit the Parties' ability to bring future litigation against any other
28

1 party or in any way create a condition precedent to the commencement of future lawsuits or other
2 legal action by the Parties.

3 XIV

4 STATEMENTS TO THE PRESS

5 The Parties agree to provide advance copies of their draft press releases to announce this
6 settlement and Stipulated Judgment for review and comment by all other parties, and to make no
7 other statements regarding this Stipulated Judgment until the agreed upon date and time for
8 release of the written statements. The Parties will attempt in good faith to address concerns
9 raised by any other party as to the draft press release. The Parties will also provide a copy of
10 their final press releases to all other Parties before the effective date of this Stipulated Judgment.

11 XV

12 SETTLEMENT CONTINGENT ON COUNCIL APPROVAL AND SETTLEMENT OF
13 FEDERAL LAWSUIT

14 This Stipulated Judgment requires approval of the Los Angeles City Council, and is
15 subject to and contingent upon such Council approval. This Stipulated Judgment is also
16 contingent upon a settlement of the federal lawsuit *Natural Resources Defense Council, Inc., et*
17 *al. v. United States Army Corps of Engineers, et al.*, Case No. 02-04793 MMM (Ex).

18 XVI

19 FORCE MAJEURE

20 If an event of force majeure occurs, such as civil commotion, war, acts of public enemies,
21 fire, explosion, earthquake or other natural disaster or action of the elements, or acts of God, or
22 unforeseen circumstances which result in a prolonged interruption of operations of the Port, and
23 if such event of force majeure is so severe that it prevents the Port from fulfilling its obligations
24 under this Agreement, then those obligations to that extent shall be suspended during the period
25 of force majeure, but not thereafter. This provision shall not apply to the obligations under
26 section VIII.B, except that the obligations under section VIII.B shall be suspended if the event of
27 force majeure results in the cessation of operations at the China Shipping Terminal prior to
28 certification of the China Shipping EIR and shall resume as soon as such cessation ends. The

1 Port shall provide to Petitioners notice of an event of force majeure within five days of its
2 occurrence. Any disputes concerning the application of this force majeure provision shall be
3 submitted to the Arbitrator.

4 XVII

5 INTEGRATION AND SEVERABILITY

6 The Parties agree that this Stipulated Judgment sets forth the final entire agreement
7 between them relating to their settlement and that this document merges and supersedes all prior
8 discussions, agreements, understandings, representations, and all other communications between
9 them relating to the subject matter of this Stipulated Judgment.

10 Each provision of this Stipulated Judgment shall be interpreted in such a manner as to be
11 valid and enforceable under applicable law, but if any provision of this Stipulated Judgment is
12 hereinafter modified or invalidated by further order of a court of competent jurisdiction, that
13 provision shall be invalidated only to that extent, without thereby invalidating the remainder of
14 that provision or of any other provision. If any provision of this Stipulated Judgment is modified
15 or invalidated as set forth above, or any funding decision made pursuant to the Stipulated
16 Judgment, becomes prohibited or invalid under any applicable law, then the Parties shall
17 negotiate in good faith and seek to agree upon a substitute provision or funding decision
18 consistent with the intent of this Agreement which avoids the legal defect that resulted in the
19 prohibition or invalidity. If the Parties cannot agree on such a substitute provision or funding
20 decision, the Parties shall submit the issue to the Arbitrator.

21 XVIII

22 RELEASE OF CLAIMS

23 The parties hereby release all claims relating to the issuance of the China Shipping Lease
24 and Coastal Development Permit for the China Shipping Project alleged in this action entitled
25 *Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al.* This limited release
26 shall not extend to any other matter, does not release any of the rights and obligations under this
27 Stipulated Judgment, and shall not extend to any action to enforce or interpret the provisions of
28 this Agreement. This release shall not extend to any dispute regarding the adequacy or

1 compliance with CEQA of the China Shipping EIR to be prepared pursuant to this Agreement,
2 including but not limited to its discussion of traffic impacts. The Parties agree that all disputes,
3 including claims for attorneys' fees and costs, regarding the Stipulated Judgment entered on
4 March 6, 2003 and existing as of the Effective Date of this Amended Stipulated Judgment shall
5 be deemed resolved without further modification of the Stipulated Judgment, with each side
6 having agreed to bear their own attorneys' fees and the costs are resolved.

7 **XIX**

8 **ADDITIONAL PROVISIONS**

9 A. No Admission. Nothing in this Stipulated Judgment shall be construed as or
10 deemed for any purpose to be an admission or denial as to the validity of any claims or defenses.
11 The Parties agree that if this Stipulated Judgment is not entered as a stipulated judgment by the
12 Los Angeles Superior Court and therefore does not become effective, no Party can use any part
13 of this Stipulated Judgment in any way in any legal proceeding.

14 B. Warranty of Authority. Each of the Parties represents and warrants that it has the
15 right, power and authority to execute this Stipulated Judgment.

16 C. Written Waiver. A waiver of any provision of this Stipulated Judgment shall not
17 be effective unless such a waiver is made expressly in writing. A written waiver of any one
18 breach shall not be deemed a waiver of any other breach of the same or any other provision of
19 this Stipulated Judgment.

20 D. Legal Counsel and Joint Preparation. The Parties affirm that they have been
21 represented by counsel of their own choosing regarding the preparation and negotiation of this
22 Stipulated Judgment and the matters set forth herein, and that each of them has read this
23 Stipulated Judgment Agreement and is fully aware of its contents and its legal effect. The
24 language of all parts of this Stipulated Judgment shall in all cases be construed as a whole,
25 according to its fair meaning, and not strictly for or against any Party. No presumptions or rules
26 of interpretation based upon the identity of the Party preparing or drafting the Stipulated
27 Judgment, or any part thereof, shall be applicable or invoked.

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E. Binding on Successors. This Stipulated Judgment shall be binding on and inure to the benefit of the successors and assigns of the Parties.

F. Counterparts. This Stipulated Judgment may be executed in counterparts, and when all Parties have executed this Stipulated Judgment, each counterpart will be deemed an original.

G. Captions. Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this Settlement Agreement.

H. Notices. Notices or other communications given or required to be given under this Stipulated Judgment, shall be effective only if rendered or given in writing by overnight mail, hand delivery, or email or facsimile transmission if such email or facsimile transmission is confirmed by live telephone conversation, to the Party's representative identified below:

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For Respondents: Larry Keller, Executive Director
Port of Los Angeles
425 South Palos Verdes Street
San Pedro CA 90731
Facsimile No.: (310) 831-6936
Email: lkeller@portla.org
Telephone: (310) 732-3456

Dr. Ralph Appy,
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro CA 90731
Facsimile No.: (310) 547-4643
Email: rappy@portla.org
Telephone: (310) 732-3497

Thomas A. Russell, Senior Assistant City Attorney
Harbor Department, City Attorney's Office
415 South Palos Verdes Street
Facsimile No.: (310) 831-9778
Email: trussell@portla.org
Telephone: (310) 732-3750

For Petitioners: Julie Masters, Esq.
Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401
Facsimile No.: (310) 434-2399
Email: jmasters@nrdc.org
Telephone: (310) 434-2300

Andrew Mardesich, President
San Pedro Peninsula Homeowners United, Inc.
1931 Bardale Ave.
San Pedro, CA 90731
Facsimile No.: (310) 832-4919
Email: amardesich@earthlink.net
Telephone: (310) 832-4919

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Noel Park, President
San Pedro and Peninsula Homeowners' Coalition
3233 South Walker Avenue
San Pedro, CA 90731
Facsimile No.: (562) 804-5210
Email: jdcorvette@telis.org
Telephone: (562) 804-5205

Todd Campbell, Policy Director
Coalition for Clean Air
523 West Sixth Street, 10th Floor
Los Angeles, CA 90014
Facsimile No.: (213) 630-1158
Email: todd@coalitionforcleanair.org
Telephone: (213) 630-1192

I. Effective Date. This Amended Stipulated Judgment shall be effective on the date that it is entered as an amended stipulated judgment by the Los Angeles Superior Court.

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NOW, THEREFORE, IT IS ORDERED THAT:

(1) A writ of mandate has already been issued by this Court requiring preparation of a project-specific EIR for Phases I, II, and III the China Shipping Project.

(2) Operation of Phases II and III is continued to be enjoined, pending certification of that EIR.

(3) Based on this Amended Stipulated Judgment of the Parties, the writ of mandate and injunction previously issued by this Court are hereby modified so that construction and operation of Phase I may continue subject to the terms of this Stipulated Judgment, including the capacity cap set forth in Section XI.

(4) This Court retains jurisdiction to enforce and administer the terms of this Amended Stipulated Judgment.

IT IS SO ORDERED.

Dated: 10-14-04⁰⁶

DZINTRA JANAUS

Honorable Dzintra Janavs
Judge, Los Angeles County Superior Court

(parties' signatures follow)

1 SIGNATURES OF PARTIES:

2 DATED: May 19, 2004
3 The Los Angeles Board of Harbor
4 Commissioners

5
6 By: [Signature]
7 Nicholas Tonsich, President
8

DATED: May 11, 2004
Natural Resources Defense Council, Inc.

By: [Signature]
Gail Ruderman Feuer, Senior Attorney

9
10 DATED: 5/19/04
11 The City of Los Angeles Harbor Department
12 and the City of Los Angeles by its Board of
13 Harbor Commissioners

14 By: [Signature]
15 Larry Keller, Executive Director
16

DATED: 5/11/04
San Pedro and Peninsula Homeowners
Coalition

By: [Signature]
Noel Park, President

17
18
19 DATED: 5/19/04

20
21 Attest: [Signature]
22 Board Secretary
23

DATED: _____
San Pedro Peninsula Homeowners United,
Inc.

By: _____
Andrew Mardesich, President

DATED: _____
Coalition for Clean Air, Inc.

By: _____
Tim Carmichael, President/Chief
Executive Officer

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SIGNATURES OF PARTIES:

DATED: _____
The Los Angeles Board of Harbor
Commissioners

By: _____
Nicholas Tonsich, President

DATED: _____
The City of Los Angeles Harbor Department
and the City of Los Angeles by its Board of
Harbor Commissioners

By: _____
Larry Keller, Executive Director

DATED: _____
Attest: _____
Board Secretary

DATED: _____
Natural Resources Defense Council, Inc.

By: _____
Gail Ruderman Feuer, Senior Attorney

DATED: _____
San Pedro and Peninsula Homeowners
Coalition

By: _____
Noel Park, President

DATED: 5/11/04
San Pedro Peninsula Homeowners United,
Inc.

By: 
Andrew Mardesich, President

DATED: _____
Coalition for Clean Air, Inc.

By: _____
Tim Carmichael, President/Chief
Executive Officer

1 **SIGNATURES OF PARTIES:**

2 DATED: _____
3 The Los Angeles Board of Harbor
4 Commissioners

5
6 By: _____
7 Nicholas Tonsich, President

8
9
10 DATED: _____
11 The City of Los Angeles Harbor Department
12 and the City of Los Angeles by its Board of
13 Harbor Commissioners

14
15 By: _____
16 Larry Keller, Executive Director

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19 DATED: _____

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21 Attest: _____
22 Board Secretary

DATED: _____
Natural Resources Defense Council, Inc.

By: _____
Gail Ruderman Feuer, Senior Attorney

DATED: _____
San Pedro and Peninsula Homeowners
Coalition

By: _____
Noel Park, President

DATED: _____
San Pedro Peninsula Homeowners United,
Inc.

By: _____
Andrew Mardesich, President

DATED: 5/10/04
Coalition for Clean Air, Inc.

By: Tim Carmichael
Tim Carmichael, President/Chief
Executive Officer

1 **APPROVED AS TO FORM:**

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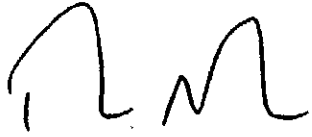
4 DATED: May 18, 2004
5 ROCKARD J. DELGADILLO, City
6 Attorney

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10 By: 
11 Thomas A. Russell
12 Senior Assistant City Attorney
13 City of Los Angeles

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DATED: May 11, 2004
NATURAL RESOURCES DEFENSE
COUNCIL, INC.; SAN PEDRO AND
PENINSULA HOMEOWNERS
COALITION; SAN PEDRO PENINSULA
HOMEOWNERS UNITED, INC.;
COALITION FOR CLEAN AIR, INC.


By: 
Gail Ruderman Feuer
Senior Attorney
Natural Resources Defense Council, Inc.

EXHIBIT A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

FILED

DIVISION FOUR

OCT 23 2002

JOSEPH A. LANE Clerk

S. VEVENKA Deputy Clerk

NATURAL RESOURCES DEFENSE
COUNCIL, INC., et al.,

Plaintiffs and Appellants,

v.

CITY OF LOS ANGELES,
PORT OF LOS ANGELES, and
LOS ANGELES BOARD OF
HARBOR COMMISSIONERS,

Defendants and Respondents.

B159157

(Super. Ct. No. BS070017)
(Dzintra Janavs, Judge)

TEMPORARY STAY
ORDER

THE COURT:*

Pursuant to Code of Civil Procedure section 923, and pending further order by a court of competent jurisdiction, the court hereby issues a stay effective immediately of portions of the China Shipping Project which is the subject of appeal No. B159157, as follows:

1. Completion of the wharf at Berth 100 beyond 1,000 feet, currently estimated to be completed by December 20, 2002;
2. Erection and operation of the cranes currently scheduled to be delivered within the next few weeks;

- 3. Operation of Phase I of the China Shipping Project;
- 4. Construction and operation of Phases II and III of the China Shipping Project.

This stay does not prevent: completion of the storm drain system; completion of the backlands including security fences, permanent lights and power; use of the backlands for container storage; offloading and storage of the cranes at Berth 100.

CSW Vogel *Epstein* *Hastings*
*VOGEL (C.S.), P.J. EPSTEIN, J. HASTINGS, J.

EXHIBIT B

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**AGREEMENT TO SUPPLY AND TO USE ALTERNATIVE
MARITIME POWER AND LOW PROFILE CRANES**

The Parties to this Agreement are the Port of Los Angeles ("the Port"), the City of Los Angeles, China Shipping Holding Co., (North America), Ltd., ("China Shipping"), and the Natural Resources Defense Council, Inc. ("NRDC"), on its own behalf and on behalf of petitioners in the action entitled Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al., Los Angeles Superior Court Case No. BS 070017. The Parties agree as follows:

1. The Port shall pay the cost of equipping China Shipping vessels to use Alternative Maritime Power ("AMP") up to the aggregate cost of \$5 million. Subject to the opening of Phase I of the Terminal assigned to China Shipping pursuant to Permit No. 999, including Berths 97-100, China Shipping shall retrofit four vessels equipped to operate on AMP at the Port and use AMP for hoteling pursuant to the following schedule:
 - a. By August 31, 2004, China Shipping shall retrofit two vessels, which vessels shall be dedicated to service of the Port of Los Angeles and shall call at Berths 97-109 ("the Terminal") and use AMP while docked at berth;
 - b. During the period from August 31, 2004 through January 1, 2005, a minimum of 30% of ship calls, on average, at the Terminal shall utilize AMP while at berth;
 - c. By January 1, 2005, China Shipping shall retrofit a total of three vessels, which vessels shall be dedicated to service of the Port of Los Angeles and shall call at the Terminal and use AMP while docked at berth;

- d. During the period from January 1, 2005 through July 1, 2005, a minimum of 60% of ship calls, on average, at the Terminal shall utilize AMP while at berth;
- e. By March 31, 2005, China Shipping shall retrofit a total of four vessels, which vessels shall call at the Terminal and use AMP while docked at berth;
- f. For every twelve-month-period commencing July 1, 2005, a minimum of 70% of ship calls, on average, at the Terminal shall utilize AMP while at berth.
- g. If for reasons of a vessel emergency or vessel casualty, a China Shipping AMP-equipped vessel is out of service and unavailable for use at the Terminal, the percentage of AMP calls required at the Terminal shall be reduced at an annual rate of 10% for the period of unavailability. In this case, China Shipping shall provide notice to the parties of the emergency or casualty and the reasons therefore.

2. China Shipping may equip additional vessels for AMP use, such to be paid for by the Port up to the \$5 million aggregate cost. China Shipping may commence use of Phase I of the Terminal, as defined in the Amended Stipulated Judgment, subject to the terms and conditions of this Agreement. Subject to the feasibility provisions in Paragraph 5 herein, the Port shall compensate China Shipping and any other user of the Terminal affiliated with China Shipping, for any additional cost of AMP power above the cost of power supplied by vessel generators based on the prevailing cost of fuel on the date of the vessel's arrival. These costs shall include the additional costs of connecting and disconnecting the vessel to the power source. The Port shall compensate China Shipping for the additional cost of electricity for AMP use above the cost of power supplied by the vessel generators based upon the prevailing industrial charge for electricity and the prevailing cost of fuel on the date of that vessel's arrival ("Excess AMP

Cost") up to but not to exceed \$3 million per calendar year for the terminal. This calculation of Excess AMP Cost shall exclude the cost of equipping China Shipping vessels to use AMP subject to the aggregate cost cap of \$5 million referenced in numbered paragraph 1 above and the costs of connecting and disconnecting the vessels and power source. If the Excess AMP Cost exceeds \$3 million, the percentage requirements of AMP usage pursuant to paragraph 1 shall be reduced in an amount so that the Excess AMP Cost is \$3 million per calendar year; in this event, the Port shall not be responsible for Alternative Air Emissions Mitigation.

3. The Port shall make good faith efforts to ensure that the infrastructure to provide AMP, including the barge delivering AMP ("AMP Infrastructure"), is available for use upon arrival by any China Shipping AMP-equipped vessel that calls at the Terminal. China Shipping shall give the Port 48 hours advanced notice that an AMP-equipped vessel will be arriving at the Terminal. If an AMP-equipped China Shipping vessel calls at the Terminal and China Shipping has provided the Port with the required advance notice of that vessel call, but the AMP Infrastructure is not available to provide electric power to the ship, then the vessel may use its on-board generators for power until such time as AMP becomes available. If an AMP-equipped vessel runs its on-board generators at the Terminal as a result of the lack of availability of AMP under this paragraph, the ship call will still count as an AMP call for purposes of calculating the percentage AMP under paragraph 1.

4. China Shipping shall be entitled to use its AMP-equipped vessels at other terminals within the port, including those terminals that are not equipped for AMP use. China Shipping may count a vessel call by a China Shipping vessel at a berth other than the Terminal as an AMP

call at the Terminal for purposes of calculating the percentage AMP usage under paragraph 1 if the China Shipping vessel calling at a berth other than the Terminal is equipped with the necessary AMP connection and uses AMP while at berth. Notwithstanding paragraph 3 of this Agreement, if the AMP Infrastructure is unavailable for a ship calling at another berth or if such ship does not use AMP while at berth for any reason, that ship call shall not count for purposes of calculating the percentage AMP usage under paragraph 1.

5. If AMP use at the Terminal is determined by mutual agreement of the Parties or by the Arbitrator to be infeasible within the meaning of this Agreement, China Shipping shall not be required to use AMP at the Port under this Agreement. The use of AMP may be deemed infeasible only in the event that the use of AMP, and not the negligence of China Shipping, the Port, or any of their agents or contractors, causes one or more of the following problems, which problem(s) cannot be remedied through reasonable modifications to AMP or other reasonable measures: (a) a significant and unreasonable risk of injury or death to vessel, stevedore, terminal or other personnel; (b) a significant and unreasonable risk of damage to the vessel, cargo, or terminal property; (c) a violation of a Federal, State or local law or regulation that is not de minimis; (d) significant and recurring loss of power to the vessel that unreasonably affects China Shipping's operations; (e) significant and recurring interference with vessel loading and unloading operations that unreasonably affects China Shipping's operations; or (f) significant and recurring delays in vessel arrivals, commencement of cargo operations, or vessel departures as a result of the act of connecting or disconnecting the vessel to or from the AMP that unreasonably affects China Shipping's operations. The Parties agree that costs related to the

categories above may be considered in the determination of infeasibility. The Parties further agree that this feasibility test shall have no effect on the Port's determinations under CEQA.

6. If a determination of AMP infeasibility is made by mutual agreement of the Parties or by the Arbitrator pursuant to this Agreement, the Parties shall meet and confer concerning appropriate alternative air emissions mitigation and, if the Parties cannot reach agreement, any Party may submit the matter for binding arbitration pursuant to the arbitration procedures of the Amended Stipulated Judgment. The plan for Alternative Air Emissions Mitigation shall be adopted within 180 days of the Arbitrator's determination of infeasibility, if any, with implementation of the plan as soon as practicable thereafter. The Parties agree that the Port's obligation for Alternative Air Emissions Mitigation shall be up to but not exceed \$3.0 million annually. The Port and China Shipping shall cooperate in an effort to achieve on a yearly basis equivalent amounts of emissions reductions as would have been achieved by China Shipping's use of AMP at the Terminal at full capacity assuming 70% of the ships docked at the Terminal use AMP, but that the costs of this Alternative Air Emissions Mitigation shall be up to but not exceed \$3.0 million annually. The Alternative Air Emissions Mitigation shall be in addition to (1) the mitigation measures committed to in Section VIII.A of the Amended Stipulated Judgment; and (2) the mitigation measures adopted to mitigate an air quality impact of the China Shipping Project other than from ship hoteling.

7. The four existing conventional gantry cranes presently at the Terminal may remain and be operated at the Terminal. If Berth 102 is constructed, then prior to commencing operations at Berth 102 China Shipping shall cause the installation on Berth 102 of two "low

profile" cranes that are designed to reduce visual impact. If the total price of these two cranes exceeds \$25 million, including but not limited to design costs of the supplier and its subcontractor, then the Port or China Shipping may submit to the Arbitrator the question of whether that cost makes those cranes infeasible. Low profile cranes include cranes that are designed to reduce visual impact by the use of a horizontal boom that does not need to be raised up when the crane is not in use such that the overall crane height is reduced to 185 feet or less when the crane is not in use and mobile harbor cranes. The Port agrees to pay all costs of the purchase, preparation, delivery, maintenance and repair (including planning, inspection, consulting and design) of the two low profile cranes for Berth 102 in excess of what conventional gantry cranes would cost, subject to the condition that the low profile cranes comply with the Specification issued by the Port dated March 11, 2003, Addendum 1, and technical deviations submitted by ZPMC, as modified by the letter from ZPMC to the Port dated April 14, 2004, including but not limited to the cost estimate of \$9.9 million per crane. The Port shall take, and agrees to pay for, all measures necessary to ensure that the load bearing capability of the Phase II terminal will be sufficient to allow the installation, and normal and safe operation of the low-profile cranes. If Berth 102 is not utilized as a berth for container operations, then the Port shall bear all costs of transport and storage and, if applicable, disposal of the low profile cranes. At its option and sole discretion, the Port may purchase the cranes at their fair market value. If the cranes are not utilized at Berth 102 pursuant to this paragraph, and use of the cranes is feasible, the Port shall cause the low-profile cranes to be utilized at another terminal. If additional cranes are purchased for use at Berth 102, they shall be low profile cranes unless low profile cranes are determined to be infeasible as provided in paragraphs 8 and 9 below.

8. If the use of the low profile cranes at Berth 102 is determined by mutual agreement of the parties or by the Arbitrator to be infeasible within the meaning of this Agreement, China Shipping shall not be required to use the low profile cranes on Berth 102. The use of low profile cranes may be deemed infeasible only if: (1) the use of the low profile cranes does not meet standard industry requirements for the movement of containers between the vessels and the Terminal; (2) the infeasibility is not the result of the negligence or failure of China Shipping, the Port, or any of their agents, limited partners or contractors; and (3) the infeasibility cannot be remedied through reasonable modifications to the low-profile cranes or related infrastructure. The Parties agree that costs related to these categories may be considered in the determination of infeasibility. In no event shall the low profile cranes' technical or operational requirements exceed those of the existing four cranes used at Berths 97-100. The Parties agree that this feasibility test shall have no effect on the Port's determinations under CEQA.

9. Any dispute among the parties arising out of or related to the feasibility of AMP use or use of low-profile cranes, a breach of the schedule and/or percentages of AMP use pursuant to paragraph 1 above, or Alternative Air Emissions Mitigation that cannot be resolved by mutual agreement of the parties shall be referred to the Arbitrator, selected by the process described in Section VII of the Amended Stipulated Judgment in the above-mentioned action, for determination according to the following procedures and standards; arbitration regarding the feasibility of AMP and Alternative Air Emissions Mitigation shall be binding:

a. Any party may, at any time, demand arbitration pursuant to this Agreement regarding (1) the feasibility of AMP based solely on the conditions described in paragraphs 5(a) through (c) hereof, (2) application of the cap for payment of excess AMP costs pursuant to

paragraph 2 above, (3) a breach of the schedule and/or percentage of AMP use pursuant to paragraph 1 above, or (4) if AMP is determined to be infeasible in accordance with the terms of this Agreement, Alternative Air Emissions Mitigation pursuant to paragraph 6 above.

b. No party may demand arbitration regarding the feasibility of AMP based on the conditions described in paragraphs 5(d) through 5(f), until the requirements under paragraph 9(c) have been fulfilled, unless (1) the continued use of AMP is rendered wholly and immediately ineffective over a sufficient period of time to demonstrate that the vessel cannot perform its required functions without the use of its on-board power generators, (2) where the failure is not the result of the negligence of China Shipping, the Port, or any of their agents, limited partners, or contractors, and (3) the failure cannot be remedied through reasonable modifications to AMP or other reasonable measures.

c. After a six-month period during which 60% or more of the vessels calling at the Terminal use AMP, any party may demand arbitration of any dispute regarding the feasibility of AMP based on any of the conditions described in paragraphs 5(d) through 5(f). After a three-month period of use of the low-profile cranes for the loading and unloading of containers, any party may demand arbitration of any dispute regarding the feasibility of the use of low-profile cranes based on the conditions described in paragraph 8. If the continued use of the low profile cranes is rendered wholly and immediately ineffective over a sufficient period of time (including testing) to demonstrate that the cranes cannot perform their required functions, then any party may demand arbitration at that time.

d. Any demand for arbitration of any issue under this Agreement shall be made in writing to all parties, with a copy to the Arbitrator. The demand shall include a detailed statement of the issue or issues to be presented to the Arbitrator, the grounds on which relief is

sought, and the evidence supporting such request for relief. Any other party shall have the right to respond to a demand for arbitration. Following a written demand for arbitration, the parties shall meet in an attempt to resolve any disputes regarding feasibility. All parties agree to provide within 15 days of a written request all information relevant to a determination of feasibility and, if a determination of infeasibility is made, information relevant to equivalent emissions reductions, unless the parties mutually agree to a different time limit, or the Arbitrator extends the time limit.

e. Arbitration proceedings shall commence immediately following a demand for arbitration made by any party under this agreement. An arbitration hearing shall commence on a schedule to be agreed upon by the parties or determined by the Arbitrator, but shall be held no later than sixty days following the demand for arbitration. The Arbitrator shall at all times retain the authority to issue such orders as he or she deems appropriate with respect to the time, place and manner in which the arbitration shall proceed. The parties shall be entitled to present evidence at the arbitration according to rules and procedures established by the Arbitrator. Section VII.F of the Amended Stipulated Judgment in the above-mentioned action shall apply to these arbitration proceedings.

f. The use of AMP will not be required for sixty days from the time a written demand for arbitration is made regarding the feasibility of conditions described in paragraph 5, unless the Arbitrator orders otherwise. If the use of AMP ceases during the sixty day period allowed by this subsection or by order of the Arbitrator, then the period of time during which AMP is not required shall not be considered in calculating the AMP percentage requirements set forth in paragraph 1 of this Agreement.

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PROOF OF SERVICE BY MAIL
(Code Civ. Proc. secs. 1013(a), 2015.5)

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 555 West Fifth Street, Suite 3500, Los Angeles, California 90013-1024; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**[PROPOSED] AMENDED STIPULATED JUDGMENT, MODIFICATION OF STAY,
AND ORDER THEREON**

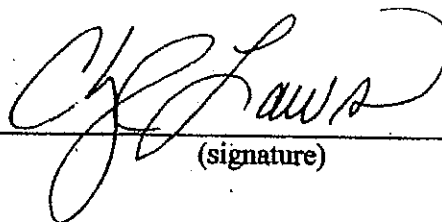
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 555 West Fifth Street, Suite 3500, Los Angeles, California 90013-1024, in accordance with Morrison & Foerster's ordinary business practices:

Gail Ruderman Feuer, Esq.
Natural Resources Defense Council, Inc.
1314 Second Street
Santa Monica, CA 90401

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

Executed at Los Angeles, California, this 9th day of June, 2004.

Cheryl Lawson
(typed)



(signature)

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I further declare that on the date hereof I served a copy of:

NOTICE OF ENTRY OF AMENDED STIPULATED JUDGMENT, MODIFICATION OF STAY, AND ORDER THEREON

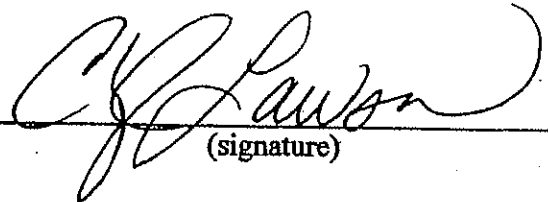
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 555 West Fifth Street, Suite 3500, Los Angeles, California 90013-1024, in accordance with Morrison & Foerster's ordinary business practices:

Gail Ruderman Feuer, Esq.
Natural Resources Defense Council, Inc.
1314 Second Street
Santa Monica, CA 90401

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

Executed at Los Angeles, California, this 18th day of June, 2004.

Cheryl Lawson
(typed)



(signature)