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ORIGINAL FILED
JUN 14 2004
LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

NATURAL RESOURCES DEFENSE
COUNCIL, INC., SAN PEDRO AND
PENINSULA HOMEOWNERS' COALITION,
SAN PEDRO PENINSULA HOMEOWNERS
UNITED, INC., and COALITION FOR CLEAN
AIR, INC.,

Petitioners,

v.

CITY OF LOS ANGELES, a Municipal
Corporation, PORT OF LOS ANGELES, and
LOS ANGELES BOARD OF HARBOR
COMMISSIONERS,

Respondents.

CHINA SHIPPING HOLDING COMPANY,
LTD., and DOES I-V,

Real Parties in Interest.

Case No.: BS 070017

SA
~~PROPOSED~~ AMENDED
STIPULATED JUDGMENT,
MODIFICATION OF STAY, AND
ORDER THEREON

Dept: 85, Honorable Dzintra Janavs

~~PROPOSED~~ AMENDED STIPULATED JUDGMENT, MODIFICATION OF STAY, AND ORDER THEREON

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RECITALS

WHEREAS, the City of Los Angeles on May 8, 2001, and the Port of Los Angeles ("Port") and Los Angeles Board of Harbor Commissioners ("Board") on March 28, 2001, ("Respondents") approved a project to construct and lease to China Shipping Holding Co, Ltd. a three-phase container terminal at Berths 97-109 of the Port and the Board on October 10, 2001, approved a Coastal Development Permit for the first phase of the China Shipping Project; and

WHEREAS, on June 14, 2001, Petitioners Natural Resources Defense Council, Inc., San Pedro and Peninsula Homeowners Coalition, San Pedro Peninsula Homeowners United, Inc., and Coalition for Clean Air, Inc. ("Petitioners") filed this action entitled *Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al.* against Respondents seeking a writ of mandate pursuant to the California Environmental Quality Act ("CEQA"); and

WHEREAS, on October 23, 2002, the Second District Court of Appeal issued a stay, which is currently in effect, staying the completion of the wharf at Berth 100 beyond 1,000 feet; the erection and operation of the cranes at Berth 100; the operation of Phase I of the China Shipping Project; and construction and operation of Phases II and III of the China Shipping Project. The stay does not prevent: completion of the storm drain system; completion of the backlands; use of the backlands for container storage; and offloading and storage of the cranes at Berth 100; and

WHEREAS, on October 30, 2002, the Second District Court of Appeal issued its decision and remanded the matter to the trial court with directions to grant Petitioners' petition for writ of mandate, to order Respondents to prepare a project-specific environmental impact report ("EIR") for all three phases of the China Shipping project, and to issue an injunction incorporating the terms of the October 23, 2002 stay; and

1 **WHEREAS**, the Court of Appeal has denied Respondents' request for a rehearing, the
2 California Supreme Court has denied Respondents' petition for review and their request for a
3 stay of the Court of Appeal's order, and the Los Angeles Superior Court has directed the
4 Respondents and Petitioners to prepare and submit an order and writ in accordance with the
5 Court's direction given at a hearing on February 6, 2003; and

7 **WHEREAS**, Petitioners desire to ensure that an adequate environmental review of the
8 impacts of container terminal operations at Berths 97-109 is prepared and considered by
9 Respondents in compliance with CEQA, Respondents desire to provide for the operation of
10 Phase I of the China Shipping Terminal while the China Shipping EIR is being prepared, and
11 Petitioners and Respondents (the "**Parties**") seek to provide a mechanism to resolve future
12 disputes over the China Shipping EIR; and

14 **WHEREAS**, the Parties desired to settle the disputes between them, to have an
15 agreement and stipulated judgment (the "**Stipulated Judgment**") entered as a stipulated
16 judgment in this Action, and further desired that the Los Angeles Superior Court confirm and
17 approve this Stipulated Judgment and modify the terms of the injunction consistent with this
18 Stipulated Judgment; and

20 **WHEREAS**, the Court entered the Stipulated Judgment on March 6, 2003; and

21 **WHEREAS**, Petitioners initiated arbitration under the Stipulated Judgment as entered on
22 March 6, 2003, and at the same time, the Port asserted it would respond by arbitrating a separate
23 group of issues, including that certain provisions of the Stipulated Judgment are not feasible or
24 otherwise excused; and
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WHEREAS, the Parties have met and conferred and agree to amend this Stipulated Judgment and further desire that the Court confirm and approve this Amended Stipulated Judgment.

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1 NOW, THEREFORE, EACH OF THE PARTIES TO THIS AMENDED STIPULATED
2 JUDGMENT AND MODIFICATION OF STAY AGREE, AND THIS COURT HEREBY
3
4 FINDS, ORDERS, ADJUDGES AND DECREES AS FOLLOWS:
5

6 I

7 JURISDICTION

8 This Court has subject matter jurisdiction over this matter and has personal jurisdiction
9 over the Petitioners and Respondents in this action. The Parties intend, and the Court hereby
10 does, retain continuing jurisdiction over this Judgment to administer and enforce its terms.
11

12 II

13 PARTIES BOUND

14 The provisions of this Judgment shall apply to and be binding upon the Parties, their
15 officers, directors, and successors. The undersigned representatives of the respective signatories
16 certify that they are fully authorized by the party that they represent to enter into the terms and
17 conditions of this Judgment, to execute this Judgment on behalf of the party that they represent,
18 and to legally bind the party that they represent.
19

20 III

21 DEFINITIONS

22 Words used in this Stipulated Judgment are to be taken and understood in their natural
23 and ordinary sense unless this Stipulated Judgment indicates that a different meaning was
24 intended. Whenever the following terms are used in this Stipulated Judgment, the following
25 meanings shall apply:
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1 A. The term “**this Agreement**” or “**this Stipulated Judgment**” or “**this Judgment**”
2 or “**this Amended Stipulated Judgment**” shall mean this Stipulated Judgment, as amended.
3

4 B. The terms “**Lease**” or “**China Shipping Lease**” shall mean Permit 999 granted by
5 the Port and City to the China Shipping Holding Co., Ltd. on March 28, 2001 and May 8, 2001,
6 respectively.

7 C. The term “**China Shipping Project**” or “**Project**” shall mean the project to
8 construct and operate the three-phase container terminal at Berths 97-109 in the West Basin area
9 of the Port of Los Angeles described in the Lease.
10

11 D. The term “**China Shipping EIR**” shall mean the project-specific EIR to be
12 prepared for the China Shipping Project pursuant to section VI of this Agreement.
13

14 E. The term “**CEQA**” shall mean the California Environmental Quality Act (Public
15 Resources Code § 21000 *et seq.*) and the State CEQA Guidelines and applicable case law.

16 F. The term “**Parties**” shall mean Petitioners and Respondents.

17 G. The term “**Petitioners**” shall mean Petitioners Natural Resources Defense
18 Council, Inc.; San Pedro and Peninsula Homeowners Coalition; San Pedro Peninsula
19 Homeowners United, Inc; and the Coalition for Clean Air, Inc.
20

21 H. The term “**Port of Los Angeles Community Advisory Committee**” or “**PCAC**”
22 shall mean that entity entitled the Port of Los Angeles Community Advisory Committee as
23 created by resolution of the Board of Harbor Commissioners on October 10, 2001.
24

25 I. The term “**Respondents**” shall mean Respondents the City of Los Angeles, the
26 Port of Los Angeles, and the Los Angeles Board of Harbor Commissioners.

27 J. The term “**Phase I**” shall mean Phase I of the China Shipping Project as defined
28 in the Lease.

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IV

DECLARATION OF GOALS AND PURPOSES

The Parties have stipulated to enter this Stipulated Judgment to address Respondents' desire to provide for the operation of Phase I of the China Shipping Project while the China Shipping EIR is prepared and to modify the stay and injunction imposed by the Court of Appeal to allow such operation, Petitioners' desire to ensure that an adequate environmental review of the impacts of container terminal operations at Berths 97-109 is prepared and considered by Respondents in compliance with CEQA and the Parties desire to seek to provide a mechanism to resolve any future disputes concerning the China Shipping EIR.

V

**OPERATION OF PHASE ONE OF THE
CHINA SHIPPING/BERTH 97-109 PROJECT
PENDING COMPLETION OF A NEW EIR**

A. Phase One Operation May Proceed. In consideration of the additional mitigation and other terms of this Judgment, the Port may complete construction and commence or allow operation of Phase I of the China Shipping Project, as described in the Lease, immediately upon the effective date of this Judgment. The Port may also continue to operate or allow the operation of Phase I while the China Shipping EIR is being prepared, and while any legal disputes regarding the China Shipping EIR are resolved. However, nothing in this Judgment shall prevent Petitioners from requesting the superior court to stay construction and/or operation of Phase I of the China Shipping Project on the basis of an inadequacy of the China Shipping EIR that is significant enough to warrant a stay in light of the agreed upon mitigation measures in this Stipulated Judgment, or for a material failure to implement the mitigation measures set forth in

1 section VIII of this Judgment, provided such request is first submitted to the Arbitrator. The Port
2 shall be subject to the capacity cap set forth in section XI of this Judgment, below, during the
3 period that the China Shipping EIR is being prepared and while any legal disputes regarding the
4 China Shipping EIR are resolved.

6 B. Modification of Stay and Injunction. In its October 30, 2002 decision in this
7 Action, the Second District Court of Appeal remanded this Action to this Court with directions
8 that this Court issue a writ of mandate requiring preparation of "an EIR in connection with all
9 three phases of the China Shipping project" and issue an injunction incorporating the terms of the
10 stay issued by the Court of Appeal on October 23, 2002. A copy of that stay order is attached to
11 this Judgment as Exhibit "A". The Parties agree that the injunction shall be modified to allow
12 the following, subject to the provisions of section V.D of this Judgment: completion of the
13 wharf at Berth 100, erection and operation of the four cranes at Berth 100, subject to the
14 provisions of section VIII.A.2 of this Judgment, and operation of Phase I of the China Shipping
15 Project, subject to the capacity cap set forth in section XI of this Judgment. The injunction of
16 Phases II and III of the China Shipping Project is not modified by this provision, and shall stay in
17 place until lifted by a court of competent jurisdiction, consistent with the writ of mandate issued
18 by the Los Angeles Superior Court.

22 C. Further Actions to Allow Operation. By executing this Judgment, the Parties
23 intend that the stay imposed by the Court of Appeal and the injunction to be issued in accordance
24 with that stay shall be modified by the Los Angeles Superior Court as described herein.

26 D. Termination of Lease. The purpose of this Stipulated Judgment from the Port's
27 perspective is to obtain the ability to complete and operate Phase I of the China Shipping Project.
28 Accordingly, upon written notice by Respondents to counsel for Petitioners that (1) China

1 Shipping has terminated the Lease, has provided notice of termination of the Lease, or otherwise
2 will not use Berths 97-109, and (2) that the site will not otherwise be utilized for container
3 terminal operations, then sections V (A) through (C), VIII, and XI, of this Stipulated Judgment
4 shall be tolled. In such an event, any money already paid by Respondents pursuant to section
5 VIII of this Judgment shall not be refunded and shall be fully distributed and used in accordance
6 with the provisions of section VIII, and the Port shall not be required to make further payments
7 pursuant to section VIII, except as provided in sections V.D.1 through 3 of this Stipulated
8 Judgment.
9 Judgment.
10

11 1. If China Shipping later intends to commence container terminal operations
12 at Berths 97-109, whether under the Lease or a new agreement, alone or in combination with any
13 other company, then Respondents shall provide written notice to counsel for Petitioners and all
14 the provisions of this Judgment shall become fully effective 30 days after receipt of such written
15 notice, and any deadlines for payments pursuant to section VIII shall be extended by the period of
16 tolling.
17

18 2. If the Port later intends to allow anyone other than China Shipping to
19 operate Berths 97-109 for container terminal operations, the Port shall provide written notice of
20 such intent to counsel for Petitioners upon the earliest commitment by the Port to lease Berths
21 97-109 or otherwise allow Berths 97-109 to be used for container operations, including but not
22 limited to the execution of a notice of intent or a memorandum of understanding, at which time
23 section VIII of this Judgment shall become fully effective.
24

25 3. If section V.A through C of this Judgment is tolled pursuant to this
26 provision and remains tolled for a period of 90 days, then the Port shall, within one year, either
27 sell or move the four cranes currently at Berths 97-109 to another location, or pay the additional
28

1 amount of \$2 million towards community aesthetic mitigation pursuant to section VIII.B of this
2 Judgment. The obligation to move the cranes or pay additional mitigation shall be extinguished
3 if container uses commence at Berths 97-109, except as provided in section VIII.A.2 of this
4 Judgment.
5

6 4. The Port currently has the right to allow the use of the backlands at Berths
7 97-109 for container storage pursuant to the decision of the Second District Court of Appeal and
8 the writ issued by the Los Angeles Superior Court. Notwithstanding the provisions of section
9 V.D(1) through (3), if section VIII of this Stipulated Judgment is tolled pursuant to this section
10 V.D, then such use of the backlands limited to that use as specifically allowed by the Court of
11 Appeal shall not constitute operation of Phase I for purposes of this section V.D. This provision
12 does not authorize any use of the backlands beyond that allowed by the Court of Appeal and the
13 Superior Court writ, and does not limit the Port's obligation to conduct CEQA review for any
14 expansion of such use beyond that allowed by the Court of Appeal and the Superior Court writ.
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17 5. If provisions of this Agreement are tolled and remain tolled for a period of
18 five years, then this Agreement shall terminate.
19

20 VI

21 PREPARATION OF A PROJECT-SPECIFIC EIR FOR THE CHINA SHIPPING/BERTH 22 97-109 PROJECT AND RECONSIDERATION OF THE CHINA SHIPPING LEASE AND 23 COASTAL DEVELOPMENT PERMIT

24 A. Preparation of a Project-Specific EIR for the China Shipping Project.

25 1. Project-Specific EIR. The Port shall prepare a project-specific EIR
26 evaluating the impacts of the construction and operation of all three phases combined of the
27 China Shipping Project. Such EIR shall be certified by Respondents under CEQA for their use in
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1 the reconsideration of the approval of the Lease and Coastal Development Permit or for the
2 approval of any container terminal use at Berths 97-109, and Respondents shall process and
3 consider such EIR under CEQA and otherwise comply with all obligations under CEQA
4 applicable to an EIR which must serve as the basis for any such project approval. The China
5 Shipping EIR shall: (a) evaluate all project-specific and cumulative impacts from the China
6 Shipping Project (development and operation of Berths 97-109 as described in the Lease) alone,
7 and not as part of any larger West Basin project or other project, (b) assess mitigation measures
8 to reduce those impacts, and (c) consider alternatives to the China Shipping Project with reduced
9 environmental impacts, including alternative "Port-related uses" other than a shipping terminal at
10 the site of the China Shipping Project and alternatives to the size, magnitude and configuration of
11 the proposed China Shipping Project.

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13
14 The Port will analyze in the China Shipping EIR the aesthetic impacts, on and off of Port
15 lands, from the terminal and its activities at Berths 97-109 including but not limited to the cranes
16 at those berths (including cumulative aesthetic impacts off of Port lands). The Port is not
17 prejudging whether these impacts are adverse or significant. As part of this review, the Port will
18 consider all written and photographic evidence of impacts submitted by the Port Community
19 Advisory Committee ("PCAC"), any of its subcommittees, or any member of the public. The
20 Port will consider aesthetic mitigation measures on and off of Port lands. Where significant
21 impacts are present, the Port will adopt mitigation measures that are feasible as required by
22 CEQA.

23
24
25 The Port shall prepare and distribute a new notice of preparation, conduct and complete a
26 new scoping process, circulate a new draft EIR for public and agency review, and complete and
27 certify the China Shipping EIR.

1 Nothing in this agreement shall prevent the Port from preparing and certifying EIRs for
2 other projects, including, but not limited to, a possible proposal to develop a project that
3 combines operation of the China Shipping Project with the Berths 121-131 Yang Ming Terminal
4 and a possible EIR that addresses other terminals in the West Basin and/or the West Basin as a
5 whole, including Berths 97-109. The Port's preparation of any such other EIR will not supercede
6 or replace or otherwise alter the Port's obligation to complete and certify the China Shipping EIR
7 in compliance with CEQA and the provisions of this Judgment and to adopt the mitigation
8 measures identified in the China Shipping EIR for the China Shipping Project, as provided in
9 section VI.C below. The Port shall certify the China Shipping EIR prior to or at the same time
10 that it certifies any other EIR that evaluates the Berth 97-109 site as part of that other EIR's
11 proposed project.
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14 2. Baseline. The baseline for consideration of impacts from the China
15 Shipping Project shall be either zero or the baseline for Berths 97-109 prior to approval of the
16 Lease in March 2001.
17

18 3. Scope of Review. The China Shipping EIR will cover all three phases of
19 the China Shipping Project, as described in the Lease. The China Shipping EIR will evaluate the
20 following categories of impacts on the Port, the surrounding communities of San Pedro and
21 Wilmington, and the South Coast Air Basin, and will set forth mitigation measures for any
22 impacts in these categories which are potentially significant: (a) geology, seismicity, and
23 topography, (b) groundwater, soils and sediments; (c) meteorology and air quality; (d) toxic
24 emissions and risk; (e) hydrology, water quality and oceanography; (f) biota and habitats; (g)
25 ground transportation and circulation; (h) marine vessel transportation; (i) noise; (j) public health
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1 and safety; (k) public services; (l) energy; (m) utilities; (n) land use; (o) aesthetics, visual impacts
2 and light and glare; (p) recreation; (q) cultural resources; and (r) environmental justice.

3
4 4. Consultant. The primary consultants to prepare the China Shipping EIR
5 shall be:

6 Lead consultant: CH2M Hill
7 Traffic consultant: Mayer Mohades and Kaku Associates
8 Air quality consultant: CH2M Hill and an additional firm to be determined
9 Aesthetics consultant: CH2M Hill and Takata and Associates.
10

11 The Port will retain an additional consultant to assist in the air quality impact analysis or review
12 of such analysis, and shall employ TIAX LLC as that additional air quality consultant if TIAX
13 LLC meets the contracting requirements of the City of Los Angeles.
14

15 5. PCAC Follow-up Meeting Regarding Draft China Shipping EIR. Port
16 staff will meet with the PCAC following the close of the public comment period on the draft EIR
17 to develop issue resolutions that can be documented for placement in the final EIR.

18 B. Reconsideration of China Shipping Project. Respondents shall reconsider their
19 approvals of the use of Berths 97-109 as a container terminal, and for that purpose they shall first
20 consider the China Shipping EIR in the manner prescribed by CEQA and in accordance with the
21 provisions of this Judgment, and shall certify the China Shipping EIR for that purpose.
22

23 Following certification of the China Shipping EIR, the Board of Harbor Commissioners
24 ("Board") shall reconsider its issuance of a Coastal Development Permit for the Project in light
25 of the new China Shipping EIR and the Port and City shall each reconsider their approvals of the
26 Lease in light of the new China Shipping EIR. Alternatively, if Berths 97-109 (or any part
27 thereof) is leased under a different agreement, the Port and City shall first complete the China
28

1 Shipping EIR and shall consider the approval of any such agreement in light of the new China
2 Shipping EIR. Nothing in this provision shall prevent Respondents from using the backlands for
3 container storage as allowed by the Second District Court of Appeal in its October 30, 2002
4 decision.
5

6 C. Adoption of Feasible Mitigation Measures. If the Port takes any further action to
7 approve use of Berths 97-109 as a container terminal, whether through the re-approval of the
8 China Shipping Lease or the Coastal Development Permit or through any other approval for
9 container terminal use of Berths 97-109, including in combination with the Yang Ming terminal,
10 then the Port will adopt all mitigation measures identified in the China Shipping EIR for all
11 environmental impacts of the China Shipping Project found in the China Shipping EIR to be
12 significant, provided that the Board finds the measure to be feasible. In addition, if the City takes
13 any further action to approve use of Berths 97-109 as a container terminal, whether through the
14 re-approval of the China Shipping Lease or the Coastal Development Permit or through any other
15 approval for container terminal use of Berths 97-109, including in combination with the Yang
16 Ming terminal, then the City will adopt all mitigation measures identified in the China Shipping
17 EIR for all environmental impacts of the China Shipping Project found in the China Shipping
18 EIR to be significant, provided that the City finds the measure to be feasible. Consistent with the
19 obligations of a lead agency decisionmaking body under CEQA, the feasibility of mitigation
20 measures identified in the China Shipping EIR shall be determined by the Board and the City,
21 respectively, based upon substantial evidence in the record. Where a mitigation measure is
22 proposed for adoption in the China Shipping EIR in order to reduce a significant impact to
23 insignificance and that measure is rejected as infeasible by the Board or the City, the Board or the
24 City shall adopt specific findings based upon substantial evidence explaining such determination,
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1 consistent with the requirements of CEQA. Any dispute regarding the "feasibility" of mitigation
2 measures will be resolved by arbitration, as set forth in section VII below.

3
4 D. Alternatives. Before the Port or City takes any further action to approve use of
5 Berths 97-109 as a container terminal, whether through the re-approval of the China Shipping
6 Lease or the Coastal Development Permit or through any other approval for container terminal
7 use of Berths 97-109, including in combination with the Yang Ming terminal, each shall consider
8 the alternatives to the China Shipping Project analyzed in the China Shipping EIR. In addition, if
9 the Port prepares a separate EIR for a combined China Shipping/Yang Ming terminal, it will
10 consider the same alternatives for the use of Berths 97-109 in that EIR and it will also consider
11 the combined terminal as an alternative in the China Shipping EIR.
12

13 VII

14 ARBITRATION

15
16 A. Any disputes between the Parties arising under this Judgment, including but not
17 limited to disputes regarding the adequacy of the China Shipping EIR, regarding time limits,
18 regarding the determination of feasibility of mitigation measures identified in the China Shipping
19 EIR, or relating to Respondents' obligations pursuant to and in compliance with section VIII
20 shall be submitted to Justice Steven Stone (retired) for non-binding arbitration, with the
21 exception of disputes submitted to arbitration regarding the feasibility of AMP and related
22 alternative Air Emissions Mitigation, per Exhibit B, which shall be binding. Should Justice
23 Stone become unavailable, the Parties will agree on a replacement arbitrator. If the parties
24 cannot reach agreement, Justice Stone, or the superior court if he is unavailable, shall designate a
25 replacement arbitrator.
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1 B. The Parties intend that arbitration shall be used only to resolve actual disputes
2 between the Parties and shall not be used to obtain advisory opinions, and accordingly, any
3 dispute submitted to the arbitrator must be an actual dispute that could be litigated between the
4 Parties. The Parties agree that to initiate an arbitration, the party wishing to arbitrate must first
5 attempt in good-faith to resolve the dispute directly with the other party. The Parties agree that
6 they will enter into stipulations, tolling agreements or other agreements needed to extend the time
7 periods for filing suit set forth in Public Resources Code section 21167 where such a time
8 extension is necessary to allow such arbitration required by this Judgment. No Party shall file
9 suit with respect to any dispute that is subject to arbitration under this Agreement unless the
10 dispute first has been arbitrated and the arbitrator has issued his or her non-binding written
11 determination concerning the dispute. The Parties agree that China Shipping may participate in
12 arbitration provided for under this Agreement with respect to Exhibit B.
13

14
15 C. Nothing in this section shall prevent Petitioners from requesting the superior court
16 to issue a temporary restraining order or preliminary injunction to stay construction and/or
17 operation of any container terminal project at Berths 97-109 on the basis of a material failure of
18 Respondents to comply with CEQA or to implement the mitigation measures set forth in section
19 VIII of this Stipulated Judgment, pending arbitration of such dispute, provided that Petitioners
20 shall have first provided the Port with an opportunity to cure the alleged breach and also
21 submitted the dispute to the Arbitrator.
22

23 D. If any legal action is brought by a third party not a Party to this Judgment
24 challenging the China Shipping EIR or an EIR evaluating joint operation of China Shipping and
25 Yang Ming if the claims relate primarily to China Shipping, or challenging the approval of the
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1 China Shipping Project, then, if requested by the Port, Petitioners shall not object to inclusion of
2 such third party lawsuit in any ongoing arbitration under this section challenging the same EIR.

3
4 E. (1) The Port shall pay costs incurred by the arbitrator for resolution of disputes
5 between the Parties, but such costs shall be no more than \$40,000 annually. (2) Where and
6 when the \$40,000 cap is exceeded, any party to the Arbitration shall have the option of bearing
7 its own cost for additional arbitration or seeking relief directly from the Superior Court. (3)
8 Subsection VII.E.2 shall not apply to disputes regarding AMP feasibility and alternative Air
9 Emissions Mitigation, which are subject to binding arbitration. If the costs incurred by the
10 arbitrator exceed \$40,000, the parties shall initially split the cost of the arbitrator in excess of
11 \$40,000, and may later seek to reallocate those costs under section XII.

12
13 F. This section VII shall apply to any disputes among the Parties and China Shipping
14 Holding Co., Ltd. regarding the feasibility of the use of alternative power, low profile cranes, or
15 any alternative mitigation pursuant to section VIII.A.3 and Exhibit B attached hereto ("AMP
16 feasibility").

17
18 G. When any dispute is decided by the Arbitrator, the Parties shall require the
19 arbitrator to issue a statement of the rationale and reasoning for the arbitrator's determination,
20 and such statement shall be part of the record presented to any court where the dispute is
21 subsequently litigated.

22 VIII

23 MITIGATION OF CHINA SHIPPING TERMINAL AND OTHER PORT IMPACTS

24 A. Mitigation Measures

25
26
27 1. Alternative Fuels for Container Handling Equipment. The Port shall
28 require that yard tractors used at Berths 97-109 be powered only by alternative fuels ("alternative

1 fuels"), as defined by the California Air Resources Board (CARB). The Port shall require all top
2 picks and side picks used at Berths 97-109 to utilize emulsified diesel fuel and diesel oxidation
3 catalysts unless the Port provides to Petitioners written documentation by the operator that
4 emulsified diesel fuel and/or diesel oxidation catalysts cannot for technical or safety reasons be
5 used for a particular application. The Port shall require the terminal operator to begin using the
6 alternative fuel yard tractors in place of existing yard tractors on the following schedule: 15
7 alternative fuel yard tractors by June 30, 2004; 30 alternative fuel yard tractors by July 31, 2004;
8 and 45 alternative fuel yard tractors by August 31, 2004. The terminal operator shall use 100%
9 alternative fuel yard tractors no later than September 30, 2004. Until said alternative-fuel yard
10 tractors are delivered, the Port shall use only yard tractors at Berths 97-109 that are equipped
11 with diesel oxidation catalysts and use lower emitting "emulsified diesel fuel" or are equipped
12 with diesel particulate traps and use lower emitting low-sulfur diesel fuel. These requirements
13 that yard tractors be powered by alternative fuels shall apply unless the Port provides to
14 Petitioners written documentation by the operator that an alternative-fuel yard tractor cannot for
15 technical reasons be used for a particular application. Whenever this subsection applies to allow
16 the use or purchase of yard tractors that are not powered by alternative fuels, only equipment
17 operated by emulsified diesel fuel and equipped with diesel oxidation catalysts or low sulfur
18 diesel fuel with particulate traps shall be used.

23 2. Marine Terminal Cranes.

24 If Berth 102 is constructed, then prior to commencing operations at Berth 102 the
25 Port shall cause the installation on Berth 102 of two "low profile" cranes that are designed to
26 reduce visual impact. If the total price of the cranes exceeds \$25 million, including but not
27 limited to the design costs of the supplier and its subcontractors, then the Port or China Shipping
28

1 may submit to the Arbitrator the question of whether that cost makes those cranes infeasible. If
2 the Arbitrator determines that it is not feasible to purchase two "low profile" cranes that comply
3 with the Specification issued by the Port dated March 11, 2003, Addendum 1, and technical
4 deviations submitted by ZPMC, as modified by the letter from ZPMC to the Port dated April 14,
5 2004, at a cost of less than \$25 million for the two cranes, then the Port shall contribute to
6 community aesthetic mitigation to benefit San Pedro pursuant to section VIII.B.3 of the
7 Amended Stipulated Judgment in a sum equal to an additional \$800,000 per crane installed on
8 Berth 102.
9

10
11 Low profile cranes include cranes that are designed to reduce visual impact by the
12 use of a horizontal boom that does not need to be raised up when the crane is not in use such that
13 the overall crane height is reduced to 185 feet or less when the crane is not in use and mobile
14 harbor cranes. If additional cranes are purchased for use at Berth 102, they shall be low profile
15 cranes unless low profile cranes are determined to be infeasible under Exhibit B.
16

17 The Port shall, no later than 30 days from the Effective Date of this Amended
18 Stipulated Judgment, deposit into the Community Aesthetic Mitigation fund (described in section
19 VII.B.3 below) an additional \$3.5 million to be used for the creation of parks and/or open space
20 off of Port lands benefiting San Pedro.
21

22 3. Alternative Maritime Power During Hoteling of Ships. The Port shall
23 install the necessary electrical infrastructure at Berths 100 and 102 to provide shoreside electrical
24 power for ship hoteling (alternative maritime power or "AMP"). The infrastructure for Berth 100
25 shall be completed no later than March 6, 2004 and shall be provided at Berth 102 prior to
26 operation of the berth. The Port shall pay the costs of retrofitting China Shipping's ships so they
27 may use the electrical power while docked at Berths 97-109 up to a total of \$5 million.
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1 a. Notwithstanding the \$5 million cap, the Port shall require subject
2 to the feasibility standard in section VIII.A.3.c below, that a specified percentage of ships
3 docking at Berths 97-109 in the Port of Los Angeles use AMP for hoteling pursuant to the
4 following schedule:
5

- 6 1. By August 31, 2004, the Port shall retrofit two China
7 Shipping vessels, which shall be dedicated to service of the
8 Port of Los Angeles and shall call on Berths 97-109 and use
9 AMP while docked at berth;
10
- 11 2. During the period from August 31, 2004 through January 1,
12 2005, the Port shall require that a minimum of 30% of ship
13 calls, on average, at Berths 97-109 shall utilize AMP while
14 at berth;
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- 16 3. By January 1, 2005, the Port shall retrofit a total of three
17 China Shipping vessels, which shall be dedicated to service
18 of the Port of Los Angeles and shall call on Berths 97-109
19 and use AMP while docked at berth;
20
- 21 4. During the period from January 1, 2005 through July 1,
22 2005, the Port shall require that a minimum of 60% of ship
23 calls by China Shipping, on average, at Berths 97-109 shall
24 utilize AMP while at berth;
25
- 26 5. By March 31, 2005, the Port shall have retrofit a total of
27 four China Shipping vessels which shall call on Berths 100-
28 102 and use AMP while docked at berth;

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6. For every twelve-month period commencing July 1, 2005, the Port shall require that a minimum of 70% of ship calls by China Shipping, on average, at Berths 97-109 shall utilize AMP while at berth.

b. In the event that China Shipping terminates the Lease or otherwise does not use Berths 97-109 pursuant to section V.D of this Stipulated Judgment, then section VIII.A.3.b shall apply in place of section VIII.A.3.a. Under this section VIII.A.3.b, notwithstanding the \$5 million cap, the Port shall require subject to the provisions of Exhibit B that as of the date of commencement of operations at Berths 97-109 at least 70% of all ships docking at Berths 97-109 use AMP for hoteling, and shall include this provision in the lease for use of the berths.

c. The Parties have agreed with China Shipping to a feasibility test for the use of AMP. These provisions are attached as Exhibit B, and incorporated as if fully set forth herein.

4. Evaluation of Low Sulfur Marine Fuel. The Port shall evaluate the feasibility and emissions benefits (SO_x, NO_x, PM and CO₂) of using available grades of marine fuel with 2,000 parts per million (ppm) or less sulfur content (including, but not limited to, 2,000, 500, 150 and 15 ppm sulfur), in commercial container vessels when in coastal waters and at berth. The evaluation shall survey different ship configurations (i.e., including differing number, fuel type, fuel tank, sizes and uses of marine engines, sulfur content and volume of marine fuel used, annual number of times berthed at POLA and differing purposes of diesel engines, such as propulsion, propulsion/power generation or power generation) and evaluate the feasibility of all grades of lower-sulfur marine fuel in all possible configurations. The Port shall

1 evaluate: (1) the availability of marine fuels with 2,000 ppm or less sulfur content at the Ports of
2 Los Angeles and Long Beach, at all origination and ports of call used by China Shipping vessels
3 that call on Berths 97-109, and at the 20 fueling locations, other than those already included for
4 evaluation above, used most frequently by shipping companies that call on the Port of Los
5 Angeles; (2) the status of use by fleets at the Ports of Los Angeles and Long Beach and
6 throughout the world of lower-sulfur marine fuel; (3) safety considerations, including flashpoint;
7 (4) equipment needs, including modified lubricants, for each combination of engines and fuel
8 grade; and (5) any other operational issues. The feasibility evaluation shall also include an
9 assessment of the costs of the grades of lower-sulfur marine fuel and the cost per ton of pollution
10 reductions for SO_x, NO_x, PM and CO₂. The evaluation shall be completed and a report generated
11 and sent to Petitioners by May 31, 2005. In addition, the Port shall generate and send to
12 Petitioners for their review an outline of the scope of the proposed evaluation before
13 commencing the evaluation.
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17 5. Creation and Implementation of a Traffic Mitigation Plan. (a) The Port
18 shall conduct a traffic study as part of the China Shipping EIR, which study shall be completed
19 by May 1, 2003. The Port shall begin implementation of mitigation for traffic impacts of
20 operation of Phase I within 30 days of the completion of this study. The Parties acknowledge
21 that this traffic study may be issued prior to the issuance of the China Shipping EIR, and that the
22 traffic study may be revised as part of the completion of the EIR process. (b) The Port shall
23 create and implement a traffic mitigation plan for San Pedro and Wilmington in response to the
24 baseline study of traffic impacts of Port operations currently underway, and shall begin
25 implementation of the plan within three months of completion of the traffic study, which shall
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1 be completed by September 1, 2003. The traffic study is one of the seven studies ordered by the
2 Board of Harbor Commissioners on October 10, 2001.

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4 6. Modification of China Shipping Permit. The Parties agree that this
5 Amended Stipulated Judgment has, as a condition precedent, the requirement that Permit 999
6 shall be amended to incorporate the requirements of sections VIII.A.1, 2 and 3 of this Amended
7 Stipulated Judgment so that they are binding upon China Shipping. If this does not occur, then
8 the original Stipulated Judgment shall govern.

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10 B. Mitigation Payment. The Port shall act to mitigate the environmental and other
11 effects of Port operations on and off Port lands by depositing into a separate designated
12 mitigation account \$10 million per year in five installments, for a total of \$50 million. The first
13 \$10 million payment shall be made by April 5, 2003, and subsequent payments shall be made one
14 year from the date of the first payment for the following four years.

15
16 Of the mitigation payments, \$10 million shall be used for the Gateway Cities Program, as
17 set forth in section VIII.B.1. Out of the remaining payments, \$20 million shall be used for air
18 quality mitigation (as set forth in section VIII.B.2 below), and \$20 million shall be used for
19 community aesthetic mitigation (as set forth in section VIII.B.3 below), so that overall, sixty
20 percent of these funds shall be used for air quality mitigation and forty percent of these funds
21 shall be used for community aesthetic mitigation. Payments into the account shall be made on
22 the following schedule:

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24 April 5, 2003 ("First Payment Date") -- \$5 million for the Gateway Cities Program, \$1
25 million for air quality mitigation, and \$4 million for community aesthetic mitigation;

26
27 1 year from First Payment Date -- \$2.5 million for the Gateway Cities Program; \$3.5
28 million for air quality mitigation, and \$4 million for community aesthetic mitigation;

1 2 years from First Payment Date -- \$2.5 million for the Gateway Cities Program; \$3.5
2 million for air quality mitigation, and \$4 million for community aesthetic mitigation;

3 3 years from First Payment Date -- \$6 million for air quality mitigation, and \$4 million
4 for community aesthetic mitigation; and

5 4 years from First Payment Date -- \$6 million for air quality mitigation, and \$4 million
6 for community aesthetic mitigation.

7
8 All funds shall be committed for use pursuant to this section within five years. If at the
9 conclusion of the five years any funds remain that have not yet been committed, within 30 days
10 these funds shall be applied to an independent air quality mitigation program available to
11 administer the funds and mutually agreeable to the Parties, with restrictions sufficient to ensure
12 that such funds are used to reduce Port-related emissions. If the Parties cannot agree on the
13 program to receive the remaining funds, the Parties shall submit the issue to the Arbitrator.
14
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16 1. Gateway Cities Program. The \$10 million allocated to the Gateway Cities
17 Program shall be used for incentives to replace, repower or retrofit existing diesel-powered on-
18 road trucks consistent with the existing written guidelines for distribution of funds by that
19 Program. However, funding under this section may only be allocated to registered truck owners
20 who verify to the Gateway Cities Program that they have made 100 deliveries to or from the Port
21 of Los Angeles over the last year, and upon request by the Gateway Cities Program provide
22 documentation through bills of lading or similar documentation. The Gateway Cities Program
23 shall be required as a condition of receipt of the funds to provide a verifiable report and
24 accounting on a quarterly basis confirming that the funds were used for trucks calling at the Port
25 in compliance with the requirements of this Judgment. The Port shall have the right to have a
26 City auditor examine all relevant records and verify that these funds were properly disbursed.

27 2. Air quality mitigation. The portion of the mitigation funds to be used for
28 the reduction of air quality impacts from Port operations shall be deposited into a separate

1 designated account to be maintained by the Port for expenditures to be made pursuant to this
2 section. These funds shall be expended only for programs and improvements that reduce
3 emissions from Port operations that affect the communities of San Pedro and Wilmington. These
4 funds shall also be expended only pursuant to the following requirements:

5 a. funding may be allocated to improvements, facilities, engines and
6 equipment, and incentives to make alternative fuels available for Port operations (provided that
7 funding for engines and equipment may not be allocated to the costs of complying with
8 SCAQMD rules governing yard tractors, although funding may be allocated to mitigation that
9 exceeds SCAQMD requirements, or that achieves compliance at an earlier time than otherwise
10 required);

11 b. funding may be allocated to emission reductions from locomotives
12 that regularly serve the Port;

13 c. funding may be allocated to emission reductions from ships only if
14 the ship owner certifies and the Port confirms that the ship regularly calls at the Port;

15 d. funding may be allocated to emission reductions from tugs and
16 other harbor craft only if the craft is located at and directly serves the Port; and

17 e. funding may be allocated to improvements on trucks only if the
18 registered truck owner certifies to the Port that they have made 100 or more annual deliveries to
19 or from the Port over the past year. Funding of projects pursuant to subsections (a) through (d)
20 above shall have priority over funding of projects pursuant to this subsection (e).

21 The Port shall provide a report and accounting on a quarterly basis verifying that the
22 funds have been allocated in compliance with these terms.

23 3. Community aesthetic mitigation. The Port shall expend a total of \$20
24 million dollars over a four-year period for the reduction of aesthetic impacts from Port facilities
25 and operations. This community aesthetic mitigation fund is being created, in part, to allow for
26 mitigation of aesthetic impacts of the China Shipping Terminal off of Port lands. All projects
27 funded under this subsection shall be port-related projects on Port land, or shall be projects not
28 on Port land that have a demonstrable nexus or connection to the environmental, aesthetic, and/or