

Matthew Quioco, President
Dillon Clark, Secretary
Eugenia Bulanova, Treasurer
Barbara St. John, Communications Officer



A City of Los Angeles
Neighborhood Council
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www.centralsanpedronc.org • 1840 S. Gaffey Street, #212, San Pedro, CA 90731 • 310-918-8650 • info@centralsanpedro.org

CIS Regarding Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al

WHEREAS, in 2001 the Port of Los Angeles issued Permit No. 999 to China Shipping to construct, and thereafter lease and operate, the Terminal at Berths 97-109; and

WHEREAS, in 2004 environmental and community groups sought legal redress from the Port of Los Angeles for CEQA violations related to China Shipping, resulting in a 2004 court-approved settlement; and

WHEREAS, the court-approved settlement required the Port of Los Angeles to prepare an Environmental Impact Report (EIR) for the proposed China Shipping terminal as well pay \$50 million dollars towards environmental mitigation and community improvement; and

WHEREAS, in 2008 for the second time the Port of Los Angeles failed to hold China Shipping accountable via a lackluster EIR, resulting in additional litigation from environmental and community groups and the adoption of 52 mitigation measures; and

WHEREAS, many of those 52 mitigation measures were expressly contingent on being incorporated into the Port of LA's lease with China Shipping; and

WHEREAS, by 2019 the Port of Los Angeles had for a third time failed to hold China Shipping accountable by failing to fully implement/enforce all 52 mitigation measures resulting in the drafting of a Supplemental EIR (SEIR); and

WHEREAS, by 2020 it had become apparent to environmental and community groups that the 2019 SEIR was wholly inadequate as to its substance but also that the Port of Los Angeles had no intention of forcing China Shipping to comply with the SEIR; and

WHEREAS, in 2020 environmental and community groups sued the Port of Los Angeles again: *Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al.*; *SCAQMD v. City of Los Angeles, et al.*, Case No. 2021-23385; and

WHEREAS, the judge in the case took the Port of Los Angeles to task stating clearly:

“The Port violated CEQA in several ways by certifying the SEIR in August of 2020.”

“The critical assumption underlying the SEIR's environmental analysis – **i.e., that China Shipping would agree to amend its lease in 2019 to require mitigation – is completely baseless.** The Port's brief contends at 90:25-26 of its brief that this was a "reasonable assumption." But the only substantial evidence in the record leads to the opposite conclusion. This failure, standing alone, is enough to require

that the petitions be granted because it renders even the Port's watered-down mitigation measures unenforceable under the longstanding precedent summarized in section 2E above.”

“The Port has countenanced years of China Shipping's breach of existing lease provisions and obdurate refusals to negotiate new permit conditions, all without taking any action against China Shipping in the form of contract remedies or termination. And the record is replete with examples supporting the conclusion that China Shipping has, time after time, stubbornly refused to agree to implement mitigation measures.”

“The record establishes it is not feasible to achieve mitigation through negotiations with China Shipping, because the only substantial evidence before the court is that China Shipping is an unwilling participant in negotiations. **Thus, the Port's position is exposed for what it is: a mere expression of hope, untethered to any realistic expectation that China Shipping will sublimate its desire for profitable port operations to the requirements of California law and the well-being of port workers and nearby residents.”**

“The Port's statement at AR 92734, repeated at 98:4 of its merits brief, that "if there is ultimately no new lease, the revised project will not be implemented" **is simply another way of saying this: "if there is no new lease, the Port will be at liberty to continue to turn a less than vigilant eye to China Shipping's refusal to take any steps to bring the port facility into compliance with California environmental law, to the detriment of port workers and people living and working in Wilmington, Harbor City and San Pedro."**

“The record before this court establishes beyond any doubt that the only "unusual circumstances" present here are the Port's repeated failures over many years to adopt a negotiating position with China Shipping which places compliance with California environmental law and the health of harbor workers and residents ahead of (or at least on equal footing with) its desire to appease its largest tenant. **Finally, it appears to the court that the Port's own executive director knew full well in 2020 that the SEIR was destined to be struck down by the courts, and welcomed this result because it would strengthen the Port's hand with China Shipping. AR 44064-44066.”**

“In this case, the SEIR provides that MM AQ-9, MMAQ-10, MM AQ-15, MM AQ-17, and MM GHG-1 will come into effect only upon the execution of a lease amendment with China Shipping. AR 10529-10533, 10535. But this has not yet occurred and, as discussed above, there is no substantial evidence suggesting that it ever will. The Port concedes as much, but contends it was justified in taking such an approach in order to strengthen its bargaining position with China Shipping Here, **the Port has gone forward with the Revised Project – i.e., the continued operation of the Terminal – without implementing the mitigation measures to combat emissions. The absence of such mitigation measures for project activity constitutes a profound violation of CEQA. The City of Los Angeles, its City Council and the Board are ordered forthwith to set aside the August 2020 certification of the SEIR”**

BE IT RESOLVED, the CeSPNC as well as the entire San Pedro Bay community finds it abhorrent and unconscionable that the Port of Los Angeles continues to allow China Shipping to flout CEQA and the law. Equally appalling is the Port of LA continuing to look the other way when it comes to China Shipping’s recalcitrance to engage in good faith negotiations while allowing it the freedom to continue polluting our local air and water.

BE IT FURTHER RESOLVED, the CeSPNC the requests the Port of Los Angeles immediately and forthwith settle all outstanding legal claims with SCAQMD, CARB and NRDC, forgoing appeal and begin the process of drafting a SEIR that meets all legal and statutory requirements as mandated by the California Superior Court.

ADDITIONALLY, given that the Port of Los Angeles has been deemed by the California Superior Court to have been grossly negligent over many years in its dealings with China Shipping, by not requiring said entity to engage in lease negotiations to become CEQA compliant, CeSPNC request the Port of Los Angeles prepare a report detailing the environmental impact of China Shipping's non-compliance with the original EIR as well as the SEIR. To be presented to the CeSPNC no later than 60 days from receipt of this CIS.

Sincerely,

Matthew J. Quiocho

Matthew J. Quiocho
President

CIS passed by the CeSPNC Board 20 Sept, 2022
10 Yes / 0 No / 0 Abstain