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June 3, 2022

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RE: Port Master Plan Update and Draft Environmental Impact Report

Dear Mr. Campbell:

The California Attorney General's Office (AGO) has reviewed the San Diego Unified Port District's (Port or Port District) Draft Environmental Impact Report (DEIR) for the Port's Master Plan Update. The Port Master Plan Update (PMPU) is the master planning document that will establish development standards for the Port's tidelands jurisdiction around San Diego Bay for the next 30 years, including development in port-related industrial areas adjacent to the environmental justice communities¹ of Barrio Logan and West National City, neighborhoods that already suffer disproportionate pollution impacts (Portside Communities).

The AGO respectfully submits these comments to recommend additional analysis of local emissions reductions plans expressly applicable to Port operations.² Specifically, we recommend that the Port conduct additional analyses to evaluate the PMPU and DEIR's consistency or inconsistency with the local community emissions reductions plan and the Port's Maritime Clean Air Strategy. We further recommend that the Port clarify how the PMPU and DEIR interact with regional planning documents for the National City and Chula Vista bayfronts. Finally, we urge

¹ Environmental justice is defined by U.S. EPA as the "fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to development, implementation, and enforcement of environmental laws, regulations and policies." (U.S. EPA, "EPA-300-B-1-6004, EJ 2020 Action Agenda: The U.S. EPA's Environmental Justice Strategic Plan for 2016-2020," at p. 1 (Oct. 2016).) For the purposes of this letter, the term "environmental justice community" refers to a community of color, or community experiencing high rates of poverty, that is overburdened by environmental pollution and the accompanying harms and risks because of past or current unfair treatment.

² The Attorney General submits these comments per to his independent power and duty to protect the environment and natural resources of the State. (Cal. Const., art. V, § 13; Gov. Code §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)

the Port to adopt additional mitigation measures and project features as part of the PMPU and DEIR in order to more fully protect the Portside Communities.

We commend the Port on the significant efforts it has already undertaken to develop more sustainable operations. We acknowledge the Port's contributions to the local community emissions reduction plan and applaud its adoption of a visionary Maritime Clean Air Strategy. We are encouraged by the Port's commitments to phase-in to zero-emission fleets, infrastructure, and watercraft; install shore power at marine terminals; and enhance open space in the Portside Communities, such as at Pepper Park in National City. We offer these comments to supplement those efforts and to ensure the Port's plans for the next 30 years will work toward meaningfully improving the quality of life of neighboring communities.

I. BACKGROUND

A. The Port Master Plan Update and Draft EIR

The PMPU is a 30-year plan establishing water and land use policies to govern the Port's tidelands jurisdiction. The tidelands are divided into 10 planning districts around San Diego Bay. The PMPU's policies address six planning elements, including environmental justice, in all but two of the 10 planning districts. The two districts excluded from the PMPU are the National City Bayfront and the Chula Vista Bayfront, both of which have separate land use plans that are pending or were recently adopted by the Port. (DEIR, p. 3-2.)

The DEIR finds that the PMPU would have significant and unavoidable impacts in several areas, including air quality, even with mitigation applied. The DEIR concluded that the PMPU would cause cumulative emissions of various pollutants in excess of thresholds, and contribute to resulting adverse health effects. (DEIR, pp. ES-19; ES-23—ES-24.) The DEIR further found that the PMPU would generate greenhouse gas (GHG) emissions inconsistent with statewide reduction targets and increase vehicle miles traveled. (*Id.* at pp. ES-73; ES-119—ES-121.)

To address these impacts, the DEIR includes mitigation measures, including installation of electric vehicle charging infrastructure; requiring 100% renewable electricity by 2030; transitioning the Port's fleet to zero-emission vehicles (ZEVs) by 2030; requiring off-road equipment to use Tier-4 engines and use zero-emission equipment when available; phasing in electric harbor craft and dredgers by 2025; and regularly evaluating new zero-emission vehicles and equipment. (DEIR, pp. ES-12—ES-121.)

B. Environmental Setting

The Port's jurisdiction encompasses the tidelands around San Diego Bay, including portions of the cities of San Diego, Coronado, National City, Chula Vista, and Imperial Beach; San Diego County; industrial and military properties; and San Diego International Airport. (DEIR, pp. 2-2 - 2-3.) In 2018, the California Air Resources Board (CARB) identified the Portside Communities as communities experiencing disproportionate pollution burdens per

Assembly Bill 617, Health and Safety Code section 44391.2 (AB 617). The neighborhoods comprising the Portside Communities are Barrio Logan, West National City, Logan Heights, and Sherman Heights, and include over 50,000 residents.³ These communities experience “a variety of air pollution sources such as the Port of San Diego, highly industrialized areas, and high truck traffic, including the Interstates 5 and 15.”⁴ The Portside Communities contain residential areas, 24 schools, 16 daycare facilities, and two hospitals.⁵

According to CalEnviroScreen 4.0,⁶ the Barrio Logan, Logan Heights, and Sherman Heights neighborhoods score in the 91st to 96th percentiles statewide for pollution burdens. CalEnviroScreen scores Barrio Logan specifically in the 96th percentile or above statewide for exposure to diesel particulate matter (diesel PM), impaired waters, toxic releases, hazardous waste, and groundwater threats. It also finds that Barrio Logan residents suffer from asthma at rates higher than 95% of other Californians. A majority of these communities identify as Hispanic, with a significant number identifying as Black.

The pollution burdens on West National City residents are not much better. National City is the poorest city in San Diego County.⁷ CalEnviroScreen ranks this area in the 97th percentile for pollution exposure. Residents are in the 91st to 99th percentiles for exposure to groundwater threats, hazardous wastes, cleanup sites, solid waste, and diesel PM. The community suffers from asthma more than 85% of residents statewide, and infants are more likely to have low birth weight than 84% of other Californians. West National City is very diverse, with residents identifying as Hispanic, Black, and Asian/Pacific Islander.

In December 2021, the Port released a draft diesel PM cancer risk assessment for its two marine terminals. The assessment found that 82% of Barrio Logan’s cancer risk is driven by diesel PM emissions from the Tenth Avenue Marine Terminal, while 99% of West National City’s cancer risk is driven by the National City Marine Terminal. (Diesel PM HRA, p. 7, Table 2.) The cancer risk in Barrio Logan is driven by emissions from cargo handling equipment, ocean-going vessels, ferries, and rail activities. (*Id.* at p. 16, Table 5.) In West National City, cancer risk is driven by rail activities and ocean-going vessels. (*Ibid.*)

Although the communities living at the Chula Vista bayfront are not included within the

³ Community Emissions Reduction Plan, Portside Environmental Justice Neighborhoods, p. 5 (July 2021) (hereafter, CERP).

⁴ CARB, Community Air Protection Program, Portside Environmental Justice Neighborhoods, <<https://ww2.arb.ca.gov/our-work/programs/community-air-protectionprogram/communities/portside-environmental-justice>> [last accessed Feb. 3, 2022] (hereafter, CERP).

⁵ *Ibid.*

⁶ CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that considers environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score.

⁷ CERP, *supra*, note 3 at p. 14.

Portside Communities as identified by CARB, they are similarly impacted by pollution. Per CalEnviroScreen, the census tracts at the Chula Vista bayfront rank from 70%-90% for pollution exposure. The census tract closest to National City scores at 91%, with the main drivers being exposure to traffic, groundwater threats, hazardous waste, and cleanup sites. The community also experiences poverty, linguistic isolation, and unemployment. Residents identify as Hispanic, White, Black, and Asian/Pacific Islander.

C. Emission Reduction Plans for the Port and the Portside Communities

1. The Community Emissions Reduction Plan (CERP)

In July 2021, the San Diego Air Pollution Control District (APCD), in partnership with local community members and agencies, developed the Community Emissions Reduction Plan (CERP) for the Portside Communities per AB 617. CARB adopted the CERP in October 2021. The CERP lists commercial harbor craft, ocean-going vessels (OGVs), and light- and heavy-duty vehicles as the main pollution sources in the Portside Communities. (CERP, pp. 59-60.)

The CERP established emissions reduction goals, including the following: reducing cancer risk below 10-in-1 million for stationary sources by 2026; reducing diesel PM emissions to 80% of 2018 levels by 2031; and conversion of all medium- and heavy-duty trucks to 100% zero-emission vehicles (ZEV) five years ahead of state targets, i.e., by 2040. (CERP, pp. 9-10.) The CERP identified “actions” to meet these goals, including increasing EV charging infrastructure, reducing emissions from cargo handling equipment, ships, harbor craft, diesel equipment, and ship repair; and promoting zero-emission technology. (CERP, pp. 10-11.)

The Port specifically is responsible for several CERP implementation actions, including creating incentives for ZEV trucks and maritime vessels (CERP, pp. 171, 192); increasing shore power at the marine terminals (*Id.* at p. 191); enforcing truck routes (*Id.* at p. 174); expanding Pepper Park (*Id.* at p. 178); increasing urban greening (*Id.* at pp. 180-81); and supporting pedestrian and bicycle improvements (*Id.* at pp. 185-87).

2. The Maritime Clean Air Strategy (MCAS)

The Port adopted the Maritime Clean Air Strategy (MCAS) in October 2021. The MCAS’s long-term goal is to achieve 100% zero-emission trucks and cargo-handling equipment at the Port by 2030. (MCAS, p. S-2.) The MCAS envisions transitioning to 100% ZEV trucks and cargo handling equipment by 2030; reducing tugboat-related diesel PM emissions by 50% through transitions to ZEV alternatives; converting the Port’s fleet to ZEV alternatives⁸ beginning in 2022; and increasing shore power at terminals to reduce ocean-going vessel emissions. (*Id.* at pp. S-2—S-3.) The MCAS emphasizes that these goals are not commitments, but instead represent an “ideal” that “may serve as a North Star for the MCAS and as a way to aspire where the Port would like to be in 2030.” (MCAS, p. S-2.)

⁸ “Near-zero emission” vehicles are assumed to be natural gas-running vehicles.

The MCAS identified near-term actions for the Port to implement to further these goals:

- *Public Health and Community Engagement*: conduct a diesel PM health risk assessment for the Port’s terminals; contribute to an APCD air filter fund; increase tree canopy and youth education programs. (MCAS, pp. S-8—S-12.)
- *Maritime Operations*: upgrade to zero-emission cargo handling equipment and reduce cargo handling emissions by 2025; purchase an electric tugboat by June 2026; transition to all-renewable fuel by 2023, install shore power for facilities receiving 50 or more annual calls, and phase in electric ferry trips starting in 2026. (*Id.* at pp. S-13—S-15.)
- *Trucks*: Phase in ZEV trucks 20% by 2026, develop a pilot ZEV truck program by 2024; identify ZEV truck charging station locations, begin Port fleet transition by 2022; enforce truck routes. (*Id.* at pp. S-16—S-22.)
- *Ocean-Going Vessels*: implement a 90% participation vehicle reduction speed program; add additional shore power for cruise ships by 2023 and at the National City Marine Terminal by 2025. (*Id.* at pp. S-25—S-26.)

D. Other Regional Plans: The National City Plan and the Chula Vista Plan

Two Port planning districts are excluded from the PMPU: the National City Bayfront and the Chula Vista Bayfront. These districts have their own pending or adopted land use plans that the PMPU states it will not affect. (PMPU DEIR, p. 3-2.)

1. The National City Plan

The draft National City Balanced Plan would redevelop the National City bayfront’s industrial, tourist, commercial, and recreational uses. (National City Plan, pp. ES-1—2.) The plan consists of zoning amendments facilitating these developments and “balancing” land and water uses. It would reorient roadways and rail connections, create buffer zones, and expand recreation areas and open space. (*Ibid.*) Proposals include an RV park, a new marina, hotels, rail connectors, expanded bicycle routes, and road redesigns. (National City Plan, pp. ES-1—2.) A draft EIR for the National City Plan was released in September 2021, and the comment period closed in November 2021. A final EIR and plan have not been released.⁹ However, the PMPU DEIR anticipates the plan will be approved before the PMPU itself. (PMPU DEIR, p. 3-2.)

2. The Chula Vista Bayfront Master Plan

The Chula Vista Bayfront Master Plan (Chula Vista Plan) is a land use plan developed by the Port and the City of Chula Vista. The plan applies to the area of the city abutting Port

⁹ Port of San Diego, National City Bayfront, <https://www.portofsandiego.org/projects/national-city-bayfront> [last accessed May 6, 2022].

tidelands. The plan would redevelop the city's bayfront with new recreational and cultural uses; parks and open space; commercial, office, and retail uses; hotels and conference facilities; and mixed uses. (Chula Vista Plan EIR, Vol. 2, pp. 1-8—1-9.) The plan's EIR was certified by the Port in April 2010, and approved by the California Coastal Commission in August 2012.¹⁰

II. THE FINAL EIR SHOULD INCLUDE ADDITIONAL ANALYSIS OF PMPU AND DEIR INCONSISTENCY WITH LOCAL AND REGIONAL PLANS

CEQA requires environmental impact reports to discuss any inconsistencies between projects and applicable local plans, including “air quality attainment or maintenance” plans and “plans for the reduction of greenhouse gas emissions.” (Cal. Code Regs., tit. 14, § 15125, subd. (d) [hereafter, Guidelines].) “Applicable” plans are those that have been adopted and are applicable to the project at issue. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145, fn. 7.) A determination that a project is consistent or inconsistent with a plan must be supported by substantial evidence. (*Golden Door Props., LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 540.) A fair argument for a significant environmental impact under CEQA likely exists when a project is inconsistent with a plan specifically intended to mitigate environmental impacts. (*Joshua Tree Downtown Bus. All. v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 695 [citations omitted].)

CEQA does not provide criteria for determining consistency with local plans, but courts have addressed the issue with general and regional plans. A project is inconsistent with a general plan if it will “obstruct” attainment of the plan's objectives and policies. (*Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 99). In fact, “a project's consistency with a general plan's broader policies cannot overcome a project's inconsistency with a general plan's more specific, mandatory and fundamental policies.” (*Id.* at p. 100-01 [citations omitted].)

A. The Final EIR Should Address the PMPU's Inconsistencies with the Portside Communities CERP

The foregoing requirements pertain to all “applicable” plans, i.e., plans that are adopted and apply to the project. (*Chaparral Greens, supra*, 50 Cal.App.4th at p. 1145.) The Portside Communities CERP was adopted by the San Diego APCD and CARB, and expressly applies to Port activities—it is therefore an “applicable” plan subject to these inconsistency analysis requirements. Because the CERP is an emissions reduction plan per CEQA Guidelines section 15125, subsection (d), and because the PMPU could impact CERP goals and strategies, the Port must analyze PMPU inconsistencies with the CERP.

The CERP identifies several goals to decrease emissions in the Portside Communities. The DEIR summarizes the CERP's goals and actions, but describes them as “aspirational.”

¹⁰ Port of San Diego, Chula Vista Bayfront Master Plan Fact Sheet, p. 2, available at <https://pantheonstorage.blob.core.windows.net/waterfront-development/Chula-Vista-Bayfront-Master-Plan-Fact-Sheet.pdf> [last accessed Feb. 6, 2022]; see also <https://www.portofsandiego.org/projects/chula-vista-bayfront> [last accessed Feb. 6, 2022].

(DEIR, pp. 4.2-39; 4.6-22.) The DEIR concedes that “CERP strategies have not been quantified because all the details regarding implementation have not yet been finalized, and the actions in the CERP are being implemented regardless of the proposed PMPU.” (*Id.* at p. 4.2-68.) It reiterates that “these specific emission reduction measures are aspirational in nature and will not be required by CARB or [the San Diego County APCD] and will not be quantified because long-term implementation cannot be guaranteed.” (*Ibid.*) Nonetheless, the DEIR states that measures from the CERP will “potentially” be applicable to new projects as they arise. (*Id.* at pp. 4.2-69; 4.6-27; 4.6-45.) This is the only analysis of the CERP contained in the DEIR.

The Port has taken commendable actions consistent with the CERP, such as installation of shore power at multiple terminals. (DEIR, p. 4.2-34.) Some of the DEIR’s mitigation measures also further CERP strategies, such as harbor craft, infrastructure, and fleet electrification requirements. (*Id.* at pp. ES-17, ES-22, ES-73.) However, the DEIR does not analyze whether the PMPU will obstruct the CERP’s overriding goals: to reduce diesel PM emissions to 80% of 2018 levels by 2031; to convert all medium- and heavy-duty trucks to 100% zero-emission vehicles by 2040; and to reduce cancer risk below 10-in-1 million by 2026. The DEIR concluded the PMPU would have significant and unavoidable impacts, even after mitigation, from emissions of PM₁₀, PM_{2.5}, volatile organic compounds (VOCs), nitrogen oxide (NO_x), and carbon monoxide (CO), with corresponding direct and cumulative health impacts. Presumably, these impacts would frustrate, not further, the CERP’s emission reduction and cancer risk goals. Moreover, the CERP recommends strategies specifically for the Port to implement, but the PMPU does not adopt many of these measures, as discussed in more detail in Section III, below. For instance, the PMPU does not adopt ZEV truck fees or pilot projects, set ZEV truck phase-in deadlines, or commit to expanding green space in the Portside Communities.

We recommend that the Port include a more thorough analysis of the PMPU’s consistency with the CERP’s goals and strategies in the final EIR. The CERP is a community-driven plan to reduce pollution and improve the Portside Communities’ quality of life. Making the PMPU more consistent with the CERP would provide assurance that the CERP’s pollution and quality-of-life goals are reflected in and realized through Port operations and procedures. This effort is critical, as it will ensure that the Port’s plans for the next 30 years will contribute meaningfully to improving the quality of life of neighboring communities.

B. The Final EIR Should Address the PMPU’s Inconsistencies with the Maritime Clean Air Strategy (MCAS)

We have similar concerns regarding the MCAS, which outlined goals and strategies to reduce emissions in the Portside Communities. The MCAS was adopted by the Port’s Board and expressly applies to Port activities—it is therefore an “applicable” plan subject to CEQA’s inconsistency analysis requirements. (*Chaparral Greens, supra*, 50 Cal.App.4th at p. 1145.)

The DEIR explains that “the measures in the MCAS may change over time, based on Board [of Port Commissioners] direction or as technology improvements occur.” (DEIR, pp. 4.2-35 – 4.2-36.) It emphasizes that MCAS goals “are not mandatory as feasibility may not be achievable.” (*Id.* at 4.2-69.) Nonetheless, MCAS strategies “may achieve emissions reductions at

the two cargo terminals; at the cruise ship terminal; along the Working Waterfront [adjacent to Barrio Logan]; and with the District's fleet of vehicles, equipment, and marine vessels." (*Ibid.*) As with the CERP, MCAS strategies will "potentially" apply to new projects. (*Ibid.*) Although the DEIR states that GHG reductions from MCAS strategies "cannot be quantified at this time because the timing and other specific details about the implementation of these efforts are not known," the DEIR relies on these strategies to demonstrate PMPU consistency with the Port's Climate Action Plan and CARB's 2017 Scoping Plan. (*Id.* at pp. 4.6-46; 4.6-51; 4.6-56 – 4.6-57.)

We acknowledge that the DEIR contains several measures that further MCAS strategies. The Port installed shore power at some terminals, and the DEIR includes shore power; phase-in of electric construction harbor craft and equipment; EV infrastructure in new buildings; and Port fleet conversion. (DEIR, pp. 4.2-34; ES-17; ES-22; ES-73.) However, the DEIR does not analyze whether and how these mitigation measures obstruct or further similar goals in the MCAS, such as transitioning to 100% ZEV trucks and cargo handling equipment by 2030 and reducing tugboat-related diesel PM emissions by 50%. Nor does the DEIR analyze other MCAS strategies and demonstrate they are infeasible. For example, although the DEIR asserts that the GHG reductions from MCAS strategies cannot be quantified "because of timing and other specific details," the MCAS already contains deadlines and details that could be analyzed.

We recommend that the Port include a more thorough analysis of the PMPU's consistency with the MCAS goals and strategies in the final EIR. Making the PMPU more consistent with the MCAS would provide assurance that the MCAS's laudable goals and strategies are actually incorporated into the Port's primary planning document and procedures. As with the CERP, this work is essential to ensure that the Port's growth and development over the next 30 years are accompanied with meaningful efforts to reduce pollution and improve the quality of life in the Portside Communities.

C. The Final EIR Should Analyze Any Inconsistencies Between the PMPU and the National City Plan and the Chula Vista Plan

The Port should analyze any inconsistencies between the PMPU and the National City Plan and the Chula Vista Plan. These plans set standards for the redevelopment of two Port planning areas with significant environmental justice communities, but their relationship to the PMPU is unclear.¹¹

The DEIR does analyze these plans in its cumulative impacts analyses. For example, the

¹¹ That the National City Balanced Plan and EIR are still in draft form should not hinder analysis of the plan in the PMPU EIR. Although CEQA does not require an EIR to analyze draft plans, this rule likely does not apply when the applicable draft plan is scheduled to be adopted *prior* to certification of the EIR. In such a case, analysis of draft plans is unwarranted only when infeasible. (Guidelines § 15125(d), (e); *Chaparral Greens, supra*, 50 Cal.App.4th at pp. 1145, 1146, fn. 8, 1148, fn. 12.) Here, the Balanced Plan is not yet finalized, but its details are well-developed and it will likely be approved before the PMPU Final EIR. As such, it should be analyzed in the Final EIR. There can be no similar debate about the Chula Vista Plan, which was adopted in August 2012.

DEIR states that the plans could introduce structures inconsistent with the land uses or visual character of the PMPU area. (DEIR, p. 4.1-76.) Similarly, the DEIR suggests that construction activities occurring per these plans could disturb or expose hazardous materials within or near to the PMPU area, and that these plans may have projects in the PMPU watershed and could involve in-water construction activities in the PMPU area. (*Id.* at pp. 4.7-92; 4.8-90.) Finally, the DEIR anticipates that the plans could increase lodging opportunities and commercial spaces, thereby contributing growth impacts in population, housing, public services, and recreation. (*Id.* at pp. 4.11-12; 4.12-60.)

Although the DEIR does discuss the potential cumulative impacts associated with the combined operation of the PMPU, the National City Balanced Plan, and the Chula Vista Plan, the DEIR does not discuss how the standards and requirements applicable to each plan interact with each other. Nor is there any analysis of whether these three plans combined are inconsistent with the goals of the CERP and the MCAS. The omissions are problematic given that significant portions of neighboring environmental justice communities are going to be directly affected by all three plans. We urge the Port to more fully analyze the relationship between the PMPU and these other plans in the final EIR, identify any inconsistencies, and clarify how the standards in the PMPU and the two plans interact.

III. THE PMPU’S FINAL EIR SHOULD ADOPT ADDITIONAL FEASIBLE MITIGATION MEASURES AND MUST AVOID DEFERRAL OF MITIGATION

A. The Final EIR Must Analyze and Adopt All Feasible Mitigation Measures

An EIR must describe and adopt all feasible mitigation measures minimizing a project’s significant environmental impacts. (Pub. Resources Code, § 21002; Guidelines, § 15126.4(a)(1).) “Feasible” measures are those “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Guidelines, § 15364.) An EIR must respond to specific mitigation suggestions unless the suggestions are “facially infeasible.” (*Covington v. Great Basin Unif. Air Pollution Cont. Dist.* (2019) 43 Cal.App.5th 867, 879 [citations omitted].) An EIR need not adopt every measure, but “must incorporate ‘feasible mitigation measures’ when such measures would ‘substantially lessen’ a significant environmental effect.” (*Id.* [citations omitted].)

The PMPU DEIR concluded that PMPU buildout would cause cumulative air emissions of pollutants (VOCs, NO_x, CO, and PM_{2.5}) in excess of thresholds and result in adverse health effects. (DEIR, pp. ES-19; ES-23—ES-24.) The DEIR further found the PMPU would generate GHG emissions inconsistent with statewide reduction targets, and result in an increase in vehicle miles traveled. (*Id.* at pp. ES-73; ES-119—ES-121.) The CERP and the MCAS contain measures that could address these impacts and be incorporated into the PMPU. However, some of the CERP and MCAS strategies are excluded:

- *ZEV Trucks*: The CERP calls for converting medium- and heavy-duty trucks to 100% ZEVs by 2040, while the MCAS envisions 100% ZEV trucks at the Tenth Avenue and National City marine terminals by 2030, with 20% phase-in of ZEV trucks by 2026.

These strategies are not incorporated in the PMPU, and the DEIR does not contain analysis demonstrating they are infeasible.

- *Commercial Harbor Craft and Equipment:* The CERP and the MCAS urge electrification of commercial harbor craft and equipment. The DEIR provides only that *construction* harbor craft will be electric after 2025. The DEIR is silent regarding *operational* harbor craft, and does not explain why phase-in of ZEV construction harbor craft is feasible but phase-in of operational ZEV craft is not. The DEIR is also silent on the directive that the Port procure an all-electric tugboat by 2026.
- *Cargo Handling Equipment:* The CERP urges the Port to test zero-emission cargo-handling equipment. The MCAS urges a transition to 100% electric cargo handling equipment by 2030 and a reduction in cargo handling emissions 90% for NO_x, 80% for diesel PM, and 50% for black carbon by 2025. The DEIR contains no electrification requirements for cargo handling equipment. The DEIR does not include electrification of cargo handling equipment as mitigation, nor is electrification of cargo handling equipment shown to be infeasible.
- *Parks and Open Space:* The CERP urges increasing tree canopy and urban greening in the Portside Communities. The PMPU anticipates an urban greening project for Cesar Chavez Parkway in Barrio Logan, (DEIR, p. 3-79), but there is no tree canopy or urban greening mitigation in the DEIR. The MCAS recommends that the Port contribute to an air filter fund, expand tree canopy, and increase youth education programs. The PMPU and DEIR do not contain these measures, and there is no analysis showing they are infeasible.

Community advocates also recommended mitigation that was not incorporated into the DEIR. Advocates urged the Port to transition to a 100% zero-emission freight system by 2030 and to provide clean energy for all energy needs. (Envtl. Health Coalition May 2017 Letter, pp. 2-4.) They also suggested developing onsite renewable energy, and ZEV phase-in deadlines. (*Id.* at p. 5.) However, while the DEIR requires increased shore power and renewable energy, it does not analyze or demonstrate that electric freight systems, ZEV transition deadlines, or onsite renewable energy are infeasible.

Finally, the AGO developed a “warehouses best practices” guidance document in March 2021 that contains numerous suggested measures for mitigating the harmful impacts of warehouse projects on neighboring communities.¹² Because of the similar impacts associated with warehouse projects and port-related impacts, these measures may be applicable as development standards in the PMPU. Examples of measures the Port should consider include the following:

¹² State of California, Dept. of Justice, “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act” (Mar. 2021) <<https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>> (last accessed May 5, 2022).

- *Industrial Siting and Design*: adopt standards requiring that new industrial facilities within the PMPU area be sited at least 1,000 feet away from the nearest sensitive receptors; mandate physical, structural, or vegetative barriers at all PMPU facilities in order to minimize and prevent pollutant dispersal; require onsite parking, queuing, check-in, and maintenance of trucks at all PMPU industrial sites to prevent idling and maintenance on neighboring streets; and require that industrial site entry points, exit points, dock doors, and loading zones be located on the side of the site farthest from sensitive receptors.
- *Air Quality and GHG Emissions Control*: require on-road heavy duty haul trucks to be model year 2010 or newer if diesel-fueled; prohibit diesel-powered equipment from being activated for more than 10 hours per day; prohibit grading on poor air quality days; require Port tenants to use zero-emission light- and medium-duty vehicles for operations; require installation of air filtration systems at sensitive receptors within a certain radius of project sites; require installation and maintenance of air monitoring stations; mandate installation of solar panels to provide all or some of projects' energy needs; mandate installation of trees and vegetative barriers; and require compliance with Tier 2 green building and LEED standards.
- *Noise Control Measures*: require noise impact analyses for projects nearby to sensitive receptors, mandate installation of noise barriers; require location of stationary construction equipment as far from sensitive receptors as possible; limit operation and construction hours to daytime hours on weekdays; and orient public address systems away from sensitive receptors.
- *Other Measures*: require appointment of compliance officers to ensure implementation of mitigation; mandate contributions to a fund for installation of HVAC systems, dual-paned windows, and sound-reducing insulation at nearby sensitive receptors; require site lighting to be directed into the site interior; and mandate installation of cool pavements and industrial facility climate control and air filters.

Many of the measures in the AGO's warehouse guidance document will be applicable to and feasible for port operations and tenants, although not all measures will be appropriate. We urge the Port to evaluate the measures listed in the warehouse guidance document, identify which are feasible and infeasible for inclusion as development standards in the PMPU, and adopt all feasible measures. Incorporation of these and other measures as PMPU development standards will help to ensure that the Portside Communities are protected and are able to flourish as the PMPU is implemented.

B. The Final EIR Must Avoid Improper Deferral of Mitigation

CEQA mandates that mitigation for significant environmental impacts not be deferred. (Guidelines, § 15126.4(a)(1)(B).) However, when immediate mitigation is "impractical or infeasible," mitigation may be developed after project approval with certain conditions. (*Ibid.*)

Deferral is permissible provided the agency “(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be...incorporated into the mitigation measure.” (*Golden Door, supra*, 50 Cal.App.5th at pp. 518-19; Guidelines, § 15126.4(a)(1)(B).) “If mitigation is feasible but impractical at the time of [project approval], it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them.” (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 670 [citations omitted].)

The PMPU DEIR includes multiple mitigation measures that appear to be improperly deferred or lack defined performance standards. The DEIR mandates zero-emission equipment when “commercially available,” but does not define criteria for determining commercial availability. (See MM-AQ-3, MM-AQ-6.) Likewise, the DEIR requires incorporation of new technology when “feasible,” but there are no criteria describing how feasibility is to be assessed. (See MM-AQ-7, MM-AQ-9.) Other measures use similarly undefined terms. (See MM-AQ-2 [“project completion”]; MM-GHG-1 [“renewable sources”]; MM-GHG-2 [“lowest emitting option available”].) Some measures delay compliance deadlines without reason. (MM-AQ-1 [six months after PMPU approval]; MM-AQ-2 [one year after project completion]; MM-AQ-3 [after construction]; MM-AQ-7 [subsequent discretionary review].) These measures should be revised in the final EIR to contain clearer and more defined terms, criteria, and timelines.

IV. CONCLUSION

Thank you again for the opportunity to comment on the PMPU DEIR. We again commend the Port District for the significant investments and efforts it has already made to ensure a healthier and more sustainable future for the Port and its neighboring communities. The PMPU and DEIR present an opportunity to ensure the Port’s continued growth and competitiveness while establishing baseline protections for those residents most impacted by port operations. We are eager to collaborate with the Port in producing a PMPU and DEIR that further both of these important goals.

Sincerely,

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DAW: