September 2, 2015

**Via Electronic Mail**

Oakland City Administrator
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**Re: Proposed Oakland Coal Export Terminal**

To the Oakland City Administrator:

## I. INTRODUCTION

I am writing on behalf of the Sierra Club, West Oakland Environmental Indicators Project, San Francisco Baykeeper, and Communities for a Better Environment, to provide their comments relating to the proposal to develop California's largest coal export terminal at the former Oakland Army Base redevelopment, now known as the Oakland Global Trade and Logistics Center ("Oakland Global") on the Oakland waterfront. These groups are dedicated to protecting community health and promoting environmental justice, and have many members who live, work, and recreate in and around the proposed terminal site. Due to the numerous health and safety risks posed by the transportation and storage of coal in the West Oakland community, they strongly oppose the development of a coal terminal at Oakland Global.

Exporting coal from Oakland will have many negative impacts on community health and the environment, and violates commitments made by state and local officials to reduce climate change forcing greenhouse gas emissions. For these reasons we respectfully request the City to take a stand for the community and reject development of a coal terminal:

1. Allowing coal exports out of Oakland will add to the pollution in West Oakland, a low-income, predominantly African American community

already suffering the health effects of industrial and freight pollution (*see* p. 4);

2. Exporting coal is a dirty and dangerous activity, which impacts communities adjacent to the export terminal and along rail lines, creates dangerous conditions for workers in the terminal, and contaminates sensitive habitat (*see* pp. 5 to 6);

3. Exporting coal to be burned in Asia and other nations increases emission of harmful air pollutants, including carbon dioxide emissions; which fuel climate change and violate Oakland and California's climate change reduction goals (*see* pp. 7 to 9);

4. Potential mitigations, such as a covered coal facility and covered train cars, do not go far enough in protecting the public from the effects of transporting coal (see pp. 9 to 11);

5. Committing to coal exports is a risky investment, since coal markets are declining worldwide; consequently, constructing and operating a coal terminal will not provide high-quality or stable jobs (see pp. 11 to 13);

6. The City of Oakland has a public duty to protect the health and safety of its citizens and has the ability to ban coal exports (see pp. 13 to 16).

The City Council will hold a Public Health and Safety Hearing on September 21, 2015 to consider the health and safety consequences of allowing development of the coal export terminal. We understand that the City Administrator will be preparing a staff report with her recommendations regarding development of the project. This letter provides information on the health and safety risks of the proposed coal terminal, including links to relevant articles and studies, which will hopefully assist the City Administrator in her preparation of the staff report for the project.

## II. RECENT DEVELOPMENTS AT OAKLAND GLOBAL

The Oakland Global development at the former Oakland Army Base is a massive project that will create additional transportation and logistics infrastructure on the Oakland waterfront, as well as space for various commercial, industrial, and retail enterprises. (City of Oakland, 2012 Oakland Army Base Project, Initial

Study/Addendum (May 2012) at pp. 1-4.[1]) Enhancing the capacity of a pre-existing marine terminal, located at Berth 7, is one of the developments planned for the area. (*Ibid.* at p. 30.) The stated purpose of this terminal, the Oakland Bulk and Oversized Terminal ("OBOT"), is to transport cargo between the railroad and ships, and its"[e]xport cargo would consist of non-containerized bulk goods, and inbound cargo would consist primarily of oversized or overweight cargo unable to be handled on trucks." (*Ibid.*)[2] The environmental review prepared for the development did not in any way mention, consider, or study the environmental and health effects of shipping coal out of OBOT.

New information has come to light recently indicating that a significant part of OBOT's shipping capacity would be dedicated to the shipment of Utah coal. In April 2015, Utah's Community Impact Fund Board approved $53 million for investment in the OBOT.[3] In exchange for this investment, Utah would have a guaranteed right to use 49 % of OBOT's capacity, or 9 million metric tons.[4]

A coal export terminal was never part of the original development plans for Oakland Global. Consequently, Oakland citizens have not had any meaningful opportunity to weigh in on the effects of establishing California's largest coal export terminal on the Oakland waterfront. As set forth below, shipping coal creates impermissible health and safety risks for the residents of Oakland, and the City should take a stand in banning the transportation of this dangerous fuel through the City.

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[1] *Available at http://ec2-54-235-79-104.compute-1.amazonaws.com/Government/o/PBN/OurServices/Application/DOWD009157.htm.*

[2] Similarly, the City and Port's federal funding application makes no mention of the terminal being used for the transportation of coal, and simply states that "Berth 7 would be converted to a modern break-bulk terminal for movement of commodities such as iron ore, corn and other products brought into the terminal by rail. The terminal would also accommodate project cargo such as windmills, steel coils and oversized goods." (City of Oakland and Port of Oakland, TIGER III Funding Application Project Narrative at p. 4; *available at http://www.portofoakland.com/pdf/about/TIGER_application.PDF*)

[3] Doug Oakley, *Unlikely partners: Utah investing $53 million to export coal through Oakland port*, Contra Costa Times, Apr. 24, 2015; *available at* http://www.contracostatimes.com/breaking-news/ci_27981684/unlikely-partners-utah-investing-53-million-export-coal.

[4] Amy O'Donoghue, *Utah invests $53 million in California port for coal, other exports*, Deseret News, April 24, 2015, *available at* http://www.deseretnews.com/article/865627254/Utah-invests-53-million-in-California-port-for-coal-other-exports.html?pg=all

## III. ALLOWING DEVELOPMENT OF A COAL EXPORT TERMINAL AT OAKLAND GLOBAL WILL HAVE SERIOUS IMPACTS ON THE SURROUNDING COMMUNITY

### 1. Exporting Coal From Oakland Will Further Burden a Highly Impacted Community

The community surrounding the redevelopment area and Port of Oakland already suffers from poor air quality and poor health outcomes due to Port operations and other industrial activities in the area.[5] Exporting coal, which will have immediate and long-term health impacts, will only add to the already significant health burdens of the community.

According to the California Environmental Protection Agency, the community adjacent to the redevelopment area is severely burdened by diesel pollution and hazardous waste exposure, and its residents suffer from extremely high rates of asthma.[6] The California Air Resources Board's Health Risk Assessment for the area found that residents of West Oakland are exposed to three times the amount of diesel particulate matter compared to the other residents of the air basin.[7]

The health outcomes for area residents are grim. When compared to the outcomes for residents in the hillside neighborhoods of Oakland, residents living near the redevelopment area are more likely to give birth to premature or low birth weight

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[5] *See* Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED, May 6, 2014; *available at* http://ww2.kqed.org/news/air-pollution-dispute-west-oakland-army-base; *https://www.youtube.com/watch?v=GrKwTm5jldE&feature=youtu.be*

[6] Cal EnviroScreen Results for Census Tract 6001401700, *available at* http://oehha.ca.gov/ej/ces2.html.

[7] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community* at 2 (December 2008); *available at http://www.arb.ca.gov/ch/communities/ra/westoakland/documents/westoaklandreport.pdf*

children, suffer from diabetes, heart disease, stroke, and cancer.[8] Individuals born in West Oakland can expect to die 15 years earlier than individuals born in the Oakland Hills.[9] Allowing construction of a coal terminal to go forward will only add to these burdens and creates unacceptable risks to the community.

### 2. Transporting and Storing Coal Creates Impermissible Health and Safety Risks

Transporting coal to West Oakland and storing it in the neighborhood will generate large quantities of particulate matter emissions and create additional health, safety and environmental risks, which the community is ill-equipped to bear.

Coal is most commonly transported in open train cars, and according to BNSF studies (one of the rail operators that will be serving the proposed terminal), these open train cars can shed some 500 to 2,000 lbs. of coal dust from each rail car as.[10] Large quantities of coal dust will be released by trains – some 60,000-240,000 pounds of coal per train over the rail route – as coal trains are frequently 120 cars long.[11] Once it has arrived at the export terminal, coal is commonly stored in open piles, creating additional exposure risks for the community.[12]

Coal dust contains many harmful components and exposure to fugitive coal dust from coal trains, coal storage piles, and loading and unloading practices can cause impaired lung function, cardiovascular disease, and developmental disorders in

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[8] Communities for a Better Environment, *East Oakland Diesel Truck Survey Report* at p. 4, September 2010, *available at* http://www.cbecal.org/wp-content/uploads/2013/01/Diesel-truck-study-FINAL-092710.pdf.

[9] *Ibid.* at p. 5.

[10] *See* Polly Wood, *Another Voice: Coal Transport Comments Needed Now*, Hood River News, Friday, January 11, 2013, *available at* http://www.hoodrivernews.com/news/2013/jan/11/another-voice-coal-transport-comments-needed-now/; *see also,* Hearing Transcript, July 29, 2010, *Ar. Elec. Coop. Ass'n – Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, at 42:5 13.

[11] *Ibid.* (500 lbsx120 cars=60,000 lbs, 2000 lbs x 120 cars=240,000 lbs)

[12] No terminal design plans have been published for the proposed Oakland Global coal export terminal. However, even supposed "state of the art" covered facilities generate significant particulate matter and nitrogen oxide pollution, and modeling for a proposed covered terminal in Oregon showed that it would result in major violations of particulate matter and NOx standards. *See* Air Quality Modeling for the proposed enclosed coal export facility at the Port of Morrow, http://media.oregonlive.com/environment_impact/other/AERMOD_Modeling_Morrow_vfin.pdf

children.[13] Concerns about the serious effects of coal dust exposure prompted the U.S. Department of Labor to pass regulations protecting coal miners from coal dust exposures.[14] However, no such regulations are in place to protect West Oakland community members from coal dust exposures.

Coal transportation and storage also creates safety hazards for the surrounding community and along the rail lines. Coal dust is highly combustible and creates immediate physical risks from explosions and fires.[15] The Surface Transportation Board, the federal agency responsible for regulating rail traffic, has concluded that coal dust is a "pernicious ballast foulant" which can impair track stability and lead to train derailment.[16]

Pollution from coal transportation and storage can also impact the wildlife and fisheries in the San Francisco Bay Area, and near the proposed project site, which include endangered and threatened species like green sturgeon, Chinook salmon, steelhead and longfin smelt.[17] Coal dust can enter the aquatic environment through "stormwater discharge, coal pile drainage run-off, and when coal dust from storage piles, transfer conveyor belts and rail cars becomes deposited in the surrounding environment."[18] Exposure to coal dust has been found to interfere with the normal development of aquatic species like salmon.[19] Coal pile runoff is typically acidic and can contain high concentrations of copper, iron, aluminum and nickel, which also have

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[13] *See* Position Statement on Coal Exports from Concerned Oregon Physicians to Governor Kitzhaber and associated appendices, *available athttp://www.psr.org/chapters/oregon/assets/pdfs/position-statement-on-coal-1.pdf ;* Brabin, Smith, *et al.*, Respiratory Morbidity in Merseyside schoolchildren exposed to coal dust and air pollution, 70 Archives of Disease in Childhood 4 (April 1994).

[14] 75 Fed. Reg. 64411, 79 Fed. Reg. 24813.

[15] *See The Fire Below: Spontaneous Combustion in Coal*, U.S. Dep't of Energy (May 1993); *available at* http://www.coaltrainfacts.org/docs/EH-93-4-The-Fire-Below_-Spontaneous-Combustion-in-Coal.pdf;

[16] Surface Transportation Board Decision, *Arkansas Electric Cooperative Corporation – Decision on Petition for Declaratory Order*, Docket No. FD 35305 (Mar. 3, 2011); *available at http://stb.dot.gov/Decisions/readingroom.nsf/UNID/79B5382AE20F7930852578480053111F/$file/40436.pdf*

[17] Initial Study/Addendum at 175; 2002 Draft Environmental Impact Report for Oakland Army Base Redevelopment at 4.12-17.

[18] P.M. Campbell, R.H. Devlin, *Increased CYP1A1 and Ribosomal Protein L5 Gene Expression: The Response of Juvenile Chinook Salmon to Coal Dust Exposure*, Aquatic Toxicology 38 (1997); *available at http://fishphysiology.org/wp-content/uploads/2014/02/Campbell1.pdf*

[19] *Id.*

the potential to create negative environmental effects.[20] Moreover, the steady accumulation of coal dust on aquatic sediments could harm the flora and fauna living on the bottom of the sea floor, potentially reducing the diversity and number of species in various aquatic ecosystems.[21] Coal behaves similarly to other suspended or deposited sediments in aquatic environments by abrading and attenuating light, which negatively interferes with fish habitat.[22]

Operating a coal export terminal creates myriad health, safety and environmental risks, and the City should reject development of the proposed coal export terminal.

### 3. Exporting Coal Will Contribute to Climate Change and Other Local Pollution Effects

Exporting coal from Oakland also enables the continued use of coal as a fuel source, driving the continued production of climate change inducing greenhouse gas emissions, which have both local and global effects. California lawmakers have committed to reducing the state's role in producing greenhouse gas emissions, and the City of Oakland should not allow development of a coal export terminal that will interfere with these reductions goals.

Coal-fired power plants are a leading source of carbon dioxide emissions.[23] Each ton of coal burned by a typical coal plant will generate about 2.6 million tons of carbon dioxide.[24] Thus, Oakland exports of 10 million tons of coal will result in 26 million tons of carbon dioxide emissions. As set forth by the United Nations' Intergovernmental Panel on Climate Change, unrestrained greenhouse gas emissions like carbon dioxide are responsible for increasing global warming, and "[l]imiting climate change will

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[20] Environmental Protection Agency, *Steam Electric Power Generating Point Source Category: Final Detailed Study Report*, EPA 821-R-09-008 (October 2009) at 3-22 to 23; *available at http://water.epa.gov/scitech/wastetech/guide/steam-electric/upload/Steam-Electric_Detailed-Study-Report_2009.pdf*

[21] R.M. Bustin, R. Johnson, *Coal Dust Dispersal Around a Marine Coal Terminal (1977-1999), British Columbia: The Fate of Coal Dust in the Marine Environment*, International Journal of Coal Geology 68 (2006) pages 57-69.

[22] M.J Ahrens M. J., D.J. Morrisey, *Biological Effects of Unburnt Coal in the Marine Environment*, Oceanography and Marine Biology 43 (2005) pages 69-122.

[23] *See* Union of Concerned Scientists, *Environmental Impacts of Coal Power*, *available at http://www.ucsusa.org/clean_energy/coalvswind/c02c.html#.VVsOKWTLeos.*

[24] How Coal Works, Coal and Other Fossil Fuels, Union of Concerned Scientists, http://www.ucsusa.org/clean_energy/coalvswind/brief_coal.html#.VcU5XflViaU

require substantial and sustained reductions of greenhouse gas emissions."[25] The City should not support a development that will contribute to continued climate change.

Continued coal combustion overseas will have tangible and harmful effects on the local community. The byproducts of coal burned overseas do not remain in the region where the coal was burned – soot, mercury, ozone, and other byproducts of coal combustion can travel across the Pacific Ocean and affect the health of western states' ecosystems and residents.[26] In fact, the National Oceanic Administration recently found that air pollution in Asia contributes to ozone pollution in the western United States.[27] Coal combustion also drives climate change effects contributing to sea-level rise and ocean acidification.[28] Given the extensive amounts of shoreline development, the Bay Area is particularly vulnerable to sea level rise, and rising sea levels could flood residential areas, and affect key commercial and industrial areas, like local airports, highways and waste treatment plants.[29]

Permitting a development that contributes to climate pollution frustrates the commitments made by state and local officials to reducing climate change. Lawmakers in the State of California have recognized the urgent need to reduce the production of greenhouse gas emissions, and over the years have passed landmark legislation like AB 32 and issued executive orders to enable reductions goals. Most recently, in April 2015, Governor Jerry Brown issued an executive order mandating that the state reduce its greenhouse gas emissions to 40 percent below 1990 levels by 2030.[30] Further, Joint Assembly Resolution 35 urged Governor Brown to inform neighboring governors in Washington and Oregon of the health and climate risks associated with exporting coal

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[25] IPCC, Climate Change 2014: Synthesis Report, at p. 8, *available at*: http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf.

[26] Eric de Place, *Northwest Coal Exports: Some Common Questions about economics, health, and pollution* (Nov. 2011) at 7; *available at* http://www.sightline.org/wp-content/uploads/downloads/2012/11/coal-FAQ-November -12.pdf

[27] NOAA Press Release, *Asian Emissions Can Increase Ground-Level Ozone Pollution in the U.S. West* (Mar. 5, 2012); *available at http://researchmatters.noaa.gov/news/Pages/ozonestudy.aspx*

[28] *See* University of Copenhagen, Climate Office, Press Release, *International Scientific Congress Climate Change: Global Risks, Challenges, and Decisions – Key Messages from the Congress* (Mar. 12, 2009); *available at* http://climatecongress.ku.dk/newsroom/congres_key_messages

[29] *See* San Francisco Bay Conservation and Development Commission, *Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on its Shoreline* at 2 (October 6, 2011); *available at http://www.bcdc.ca.gov/BPA/LivingWithRisingBay.pdf*

[30] Office of Governor Brown, *New California Goal Aims to Reduce Emissions*, April 29, 2015, *available at* http://gov.ca.gov/news.php?id=18938.

to countries with air quality regulations less stringent than our own. [31] In rejecting a proposed coal terminal near Jack London Square, the Port of Oakland referenced these commitments and reaffirmed that a coal terminal would run counter to California's greenhouse gas reductions goals.[32]

The City of Oakland has previously committed to fighting climate change. In 2012, the City adopted an Energy and Climate Action Plan setting forth actions to reduce the City's energy consumption and "greenhouse gas emissions associated with Oakland."[33] Most recently, on June 17, 2014, the Oakland City council approved a resolution opposing the transportation of hazardous fossil fuels like coal through the City, expressing concern about the effects of coal exports and stressing the need for a transparent process and full environmental review.[34] It should reaffirm such commitments now.

Continued coal combustion, even if it occurs overseas, has real, local effects. The City of Oakland should not allow development of a coal terminal that will harm the local community and interfere with the City and State's commitments to reduce greenhouse gas emissions and fight climate change.

**4. The Available Mitigations Cannot Alleviate The Harmful Effects of Coal Exports**

The developer of the proposed coal export terminal has not made any facility plans available, and there is no way to evaluate the effectiveness of the facility at mitigating the environmental effects of exporting coal. While the developer may now be asserting that the coal export facility and the rail cars serving it may be covered, when a similar proposal arose in the context of the Howard Terminal at the Port of Oakland, the Port still rejected it based on environmental grounds.[35] The Port of Oakland is a partner agency in the Army Base redevelopment.

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[31] http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/ajr_35_bill_20120918_chaptered.html

[32] Port of Oakland, *Staff Report re: Environmental Issues Associated With Handling Export Coal* at 3 (February 19, 2014); **attached as Exhibit A**.

[33] City of Oakland, Energy and Climate Action Plan (December 4, 2012); *available at http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak039056.pdf*

[34] Oakland City Council, Resolution No. 85054 C.M.S. (June 17, 2014); *available at https://oakland.legistar.com/LegislationDetail.aspx?ID=1747455&GUID=D41B7760-10B0-455E-B1F5-88894FBAD097*

[35] Port of Oakland, *Supplemental Agenda Report* at 111 (February 27, 2014); **attached as Exhibit A**.

Proposed mitigations for other coal export facilities – such as covered coal storage piles, or covered rail cars – still give rise to serious pollution concerns. For example, air modeling for a proposed "state of the art" covered coal export facility at the Port of Morrow in Oregon showed major exceedances of particulate matter and nitrous oxide (NOx) national ambient air quality standards.[36] Both of these pollutants have significant human health effects. NOx are highly reactive gasses that can cause respiratory problems such as asthma attacks, respiratory tract syndrome, bronchitis, and decreased lung function. NOx also contributes to visibility impairment, global warming, acid rain, formation of ground-level ozone and formation of toxic chemicals.[37] Similarly, particulate matter pollution has significant health impacts including premature death, "increased hospital admissions emergency room visits, absences from school or work, and restricted activity days," due to aggravated cardiovascular and respiratory problems.[38] Sadly, the populations most at risk for these health impacts are the sick, the elderly, and children.[39] Covered coal dust facilities also generate other health and safety risks. Enclosed facilities must be ventilated, have water runoff and fire controls that all involve coal dust releases into the air and water.[40] Coal is also flammable and known to spontaneously combust.[41]

The developer may also propose the use of "covered" railroad cars in shipping coal through Oakland, as a means reduce the environment impacts. Again, there is no

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[36] *See, e.g.*, Air Quality Modeling for the proposed enclosed coal export facility at the Port of Morrow, http://media.oregonlive.com/environment_impact/other/AERMOD_Modeling_Morrow_vfin.pdf

[37] *See, e.g.*, Jaffe, D., et al. Atmospheric Pollution Research, 5 (2014), 344--351, available at http://www.atmospolres.com/articles/Volume5/issue2/APR-14-040.pdf

[38] 72 Fed. Reg. at 20,586-87 ("Epidemiological studies have shown statistically significant correlations between elevated PM2.5 levels and premature mortality."); 75 Fed. Reg. 22,896, 22,900 (Apr. 30, 2010) (EPA has determined that, "Both ozone and PM2.5 are associated with serious public health problems, including premature mortality…")("Studies have demonstrated that both fine and coarse PM can have negative effects on public health and welfare. For example, each is associated with increased mortality (premature death) rates and morbidity (illness) effects such as cardiovascular disease and decreased lung function.").

[39] *Id*.

[40] *See* IEA, December, 2010, http://www.iea-coal.org/documents/82476/7685/Propensity-of-coal-to-self-heat-(CCC/172; *See also* HOSSFELD & HATT, PRB COAL DEGRADATION: CAUSES AND CURES 1, at www.researchgate.net/publication/228972594_PRB_COAL_DEGRADATIONCAUSES_AND_CURES.

[41] Coal's spontaneously combustion problem, Sightline, April 11 2012, http://daily.sightline.org/2012/04/11/coals-spontaneous-combustion-problem/

way to evaluate the efficacy of covered rail cars as a proposed mitigation, because the developer has not posted design plans for the facility or transportation infrastructure, and there are no enforceable conditions in place for the facility or trains. Even so, there is no covering that can eliminate pollution and safety risks posed by shipping coal by rail. The developer may intend to use "surfactants" – a chemical substance sprayed over loose coal – to control coal dust. However, surfactants do not fully prevent coal dust loss as they wear off the coal along the rail lines (acting as a pollutant in their own right), and require massive quantities of water to apply. The developer may intend to use "covered rail cars," which are not a practical or effective pollution control measure. There are no covered coal trains currently in use in the United States, and to our knowledge there has been no published study about the efficacy of coal train covers. Even covered rail cars would need a ventilation or fire suppression system, thus allowing coal dust releases into the air and water. Further, because coal is inherently flammable, concerns have been raised about whether covered coal trains would increase fire risks. Additionally, because the Federal Rail Administration or the Surface Transportation Board would have jurisdiction over promulgating and enforcing any covered train rules, the use of coal train covers is not something the developer could guarantee.

Without seeing concrete design plans, it is difficult to comment on full extent of potential environmental, public health and safety impacts associated with the mitigations that could be proposed by the developer. However, there are still serious concerns associated with the use of potential mitigations. Covered facilities still create air and water pollution risks, surfactants are ineffective at fully controlling coal dust, and covered train cars an untested and difficult to enforce mitigation. The City should not trust the developer's assurances that a coal export facility can be safely operated – particularly when there are no design plans or enforceable conditions in place – and should act to prevent development of the facility.

## IV. THE RISKS OF DEVELOPING A COAL TERMINAL OUTWEIGH ANY OF THE ECONOMIC ADVANTAGES

The health and environmental risks of developing a coal terminal outweigh any of the potential economic advantages of committing to export a financially risky commodity.

Committing to export coal is a risky investment and not likely to generate a stable income stream for the City due to diminishing worldwide demand for coal. Domestic and foreign coal markets are on the decline due to environmental regulations

requiring power companies to turn to cleaner fuel sources, low natural gas prices, and an uptick in renewable energy use.[42] In recent months, a number of coal companies have declared bankruptcy due to these forces.[43] Even railroad giant BNSF has stated that it does not expect any growth in coal consumption, and that its investments in developing transportation infrastructure in the Powder Basin will "eventually be stranded assets."[44]

Members of the coalition are supportive of jobs creation in the City, and would like to see the continued economic revitalization of Oakland. However, committing to construct and operate an export terminal for a waning and harmful commodity is not the way to create good and stable jobs. Terminals that ship bulk goods like coal produce far fewer jobs than terminals that ship other types of commodities, like big machines or goods shipped on pallets.[45] The analysis conducted by Professor Dan Kammen of the University of California, Berkeley on the proposed Gateway Pacific coal export terminal in the Northwest showed only one job created for every $2 million spent, whereas, comparable investments in renewable energy generate twice as many jobs.[46] Dr. Kammen concludes that "[t]he much-ballyhooed coal-terminal jobs are a fool's bargain that should be rejected on economic grounds alone, never mind the obvious impacts. It's time we stopped feeding such fossil dinosaurs and started investing seriously in U.S. innovators, workers and companies that can help realize our low-carbon future."[47]

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[42] *See* Why Coal Companies Are Collapsing in Such Spectacular Fashion, greentechmedia, 30 July 2015, http://www.greentechmedia.com/articles/read/why-coal-companies-are-collapsing-in-such-spectacular-fashion; Institute for Energy Economics and Financial Analysis, *Global Energy Markets Transition Drives Thermal Coal into Structural Decline* (Jan. 14, 2015); *available at http://ieefa.org/global-energy-markets/*; Morgan Stanley: Vast majority of US export coal uneconomic at current spot prices, SNL financial 21 July 2015, https://www.snl.com/InteractiveX/Article.aspx?cdid=A-33289010-12341

[43] Kelsey Butler, *Peabody, Arch Coal May File Chapter 11 Bankruptcy on Obama Rules,* The Street (August 5, 2015); *available at http://www.thestreet.com/story/13244580/1/peabody-arch-coal-may-file-chapter-11-bankruptcy-on-obama-rules.html*

[44] Institute for Energy Economics and Financial Analysis, *Railway Executive Sees Powder River Basin Coal for What it Is: A Stranded Asset* (June 29, 2015); *available at http://ieefa.org/railway-executive-sees-powder-river-basin-coal-for-what-it-is-a-stranded-asset/*

[45] Eric de Place, Sightline Institute; *Northwest Coal Exports: Some Common Questions about Economics, Health and Pollution* at 8 (November 2012); *available at http://www.sightline.org/research/coal-export-faq/*

[46] Dan Kammen, For Greater Job Growth Invest in Renewable Energy not US Coal Exports, National Geographic Blog, January 15, 2013, http://energyblog.nationalgeographic.com/2013/01/15/for-greater-job-growth-invest-in-clean-energy-not-u-s-coal-exports/

[47] *Id.*

Coal is a commodity that also poses danger to workers in close proximity to it on a regular basis. Prolonged, direct exposure to coal dust – studied especially in miners – has been linked to health issues such as chronic bronchitis, decreased lung function, emphysema, cancer, and death.[48] It has also been shown to increase the risk of mortality from heart disease.[49]

There are few real economic benefits from committing to ship coal out of Oakland, and the City should reject the proposed coal export terminal and turn to developing projects which can bring healthy and stable jobs to the community.

## V. THE CITY HAS A PUBLIC DUTY TO PROTECT ITS CITIZENS AND PREVENT THE DEVELOPMENT OF A COAL TERMINAL WHICH WILL HARM THE COMMUNITY

Neither the Port of Oakland nor the City of Oakland has ever examined the environmental consequences of shipping millions of tons of coal through Oakland Global. The City has a duty to protect the health and safety of its citizens and cannot allow the development of a coal terminal which will cause serious harms to the community. The City has the power to regulate in order to protect the public health and safety, and should exercise its powers to protect the community from the development of the proposed coal terminal.

### A. The Environmental Effects of the Proposed Coal Terminal Have Never Been Studied

The environmental effects of the proposed coal terminal have never been studied. It is irresponsible for the City to allow development of a project that has never been studied under the California Environmental Quality Act ("CEQA") or the National Environmental Protection Act ("NEPA"), statutes designed to promote governmental

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[48] "Criteria For a Recommended Standard: Occupational Exposure to Respirable Coal Mine Dust" U.S. Department of Health and Human Services, September 1995, pages 52-116. Occupational Exposure to Respirable Coal Mine Dust, U.S. Department of Health and Human Services, Sep 1995, http://www.cdc.gov/niosh/docs/95-106/pdfs/95-106.pdf

[49] Landen, Deborah, et al, "Coal Dust Exposure and Mortality from Ischemic Heart Disease Among a Cohort of U.S. Coal Miners", July 2011, American Journal of Industrial Medicine, Vol. 53, Issue 10, page 6. http://www.cdc.gov/niosh/mining/UserFiles/works/pdfs/cdeam.pdf

transparency and provide the public with information about municipal developments affecting their health.

CEQA requires agencies responsible for a project to provide the public and decision makers with information about "the potential significant environmental effects of proposed activities," and to develop ways that "environmental damage can be avoided or significantly reduced." 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a); *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400). Likewise, NEPA was intended to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b); *Center for Biological Diversity v. United States Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003) (citation omitted).

Coal is not mentioned in any of the environmental review documents discussing the Oakland Global project. When the redevelopment of Oakland Global was first proposed, the environmental review for the project made no mention of the possible shipment of coal through the development.[50] Similarly, while the Initial Study/Addendum for the project prepared in 2012 discussed the facility handling "non-containerized bulk goods," it did not raise the possibility that coal could be shipped through the development.[51]

As outlined above, coal poses unique environmental and health harms that other bulk goods do not pose. Utah's investment in the development of the Oversized and Bulk Terminal would commit the facility to shipping millions of tons of Utah coal per year.[52] The City should not allow development of the project when there is no information about or analysis of the impacts that such a project will have on the community.

### B. The City Has the Legal Authority to Ban Coal Exports

The City has the legal authority to ban coal exports in order to protect the public health and safety, and it should exercise such power here.

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[50] *See* City of Oakland, Draft Environmental Impact Report, Oakland Army Base Area Redevelopment Plan (April 2002); *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak025318.pdf.

[51] *See* Initial Study/Addendum at p. 30; Figure 1-2.

[52] Amy O'Donoghue, *Utah invests $53 million in California port for coal, other exports*, Deseret News, April 24, 2015, *available at* http://www.deseretnews.com/article/865627254/Utah-invests-53-million-in-California-port-for-coal-other-exports.html?pg=all

In approving the Development Agreement with the developer of Oakland Global, the City did so with the understanding that "[t]he public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement."[53] The Development Agreement itself explicitly allows the City to apply additional city regulations to Oakland Global if it "determines based on substantial evidence and after a public hearing that a failure to do so would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health and safety."[54]

Municipalities in California have long had the power to impose conditions on the conduct of industrial operations within their bounds where necessary to protect public health and safety.[55] Consistent with this authority, Oakland can use its zoning and police powers to prohibit use of city lands for coal exports.

Many other municipalities have used their zoning and police powers to prohibit the use of municipal lands for dangerous activities such as fossil extraction and transportation. Some recent examples include:

1) **Dryden, New York and Middlefield, New York Fracking Bans** – In 2011, the town board of Dryden, New York used its zoning powers to prohibit "all oil and gas exploration, extraction and storage activities."[56] In revising the zoning ordinance, the town board found that such industrial activity "would endanger the health, safety and general welfare of the community through the deposit of toxins into the air, soil, water, environment, and in the bodies of residents."[57] The town of Middlefield, New York passed a similar ban.[58]

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[53] Oakland City Council, Ordinance No. 13183-CMS at 3 (July 16, 2013); *available at https://oakland.legistar.com/LegislationDetail.aspx?ID=1427119&GUID=9122B74A-273F-4343-B954-F848BC668685*

[54] Development Agreement between City of Oakland Prologis CCIG Oakland Global at Section 3.4.2, July 16, 2013; *available at ibid.*

[55] *See Marblehead Land Co. v. City of Los Angeles*, 47 F.2d 528, 531 (9th Cir. 1931)(upholding city authority to use zoning ordinance to protect residents from fire hazard and noxious gases resulting from oil drilling operations); *Friel v. Los Angeles County*, 172 Cal.App.2d 142, 157 (1959); *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach*, 86 Cal.App.4th 534, 555 (2001)

[56] *See Matter of Wallach v. Town of Dryden*, 23 N.Y.3d 728, 740 (N.Y. 2014); *motion for argument denied,* 24 N.Y.3d 981 (N.Y. 2014).

[57] *Id.*

[58] *Id.*

2) **San Benito County, California, Fracking Ban** – In November 2014, San Benito County sponsored a ballot measure banning fracking, which passed with over 57 percent of the vote.[59] The county found that high-intensity operations like fracking posed threats to water resources and air quality and other threats, and found that amending town zoning regulations to prohibit fracking would promote and protect the "health, safety, welfare, and quality of life of County residents."[60] An industry group challenged the measure, but dropped its lawsuit in April 2015.[61]

3) **South Portland, Maine, Crude Oil Loading Ban** – In July 2014, the town of South Portland, Maine passed a zoning ordinance prohibiting the bulk loading of crude oil, including tar sands, onto ocean-going vessels.[62] The City found that crude oil loading activity would increase the emission of hazardous air pollutants and decided to impose limitations on waterfront development "for the benefit of the public health and welfare."[63] The city amended the zoning ordinance to prohibit "the bulk loading of crude oil onto marine tanker vessels," and to prohibit "construction or installation of related facilities, structures, or equipment that would create significant new sources of air pollution…"[64]

Many other municipalities have used their powers to regulate how extractive operations or other hazardous activities may be conducted. *See* **Appendix A**.

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[59] *San Benito County voters pass fracking ban with Measure J,* KSBW.com (November 5, 2014); http://www.ksbw.com/news/central-california/hollister-gilroy/san-benito-county-voters-pass-fracking-ban-with-measure-j/29566148

[60] San Benito County, Protect Our Water and Health: Ban Fracking Initiative, *available at http://www.protectsanbenito.org/uploads/2/5/9/2/25924404/san_benito_protect_our_water_and_health__ban_fracking_initiative.pdf*

[61] Felix Cortez, *$1 billion lawsuit dropped against San Benito County*, KSBW.com (April 7, 2015); *available at http://www.ksbw.com/news/-1-billion-lawsuit-dropped-against-San-Benito-County/32241288*

[62] *See* Kelley Bouchard, *South Portland Approves Law Barring Tar Sands Oil*, Portland Press Herald (July 22, 2014); *available at http://www.pressherald.com/2014/07/22/south-portland-set-for-final-vote-on-tar-sands-ban/*

[63] City of South Portland, Clear Skies Ordinance, at 23, *available at http://www.southportland.org/files/4314/0439/7333/DOC_Recommmendations_Parts_1-4_07-01-14.pdf*

[64] *Id.* at 11.

The City of Oakland should honor its commitments to fighting climate change and use its authority to protect the public health and safety of its citizens and prevent the development of the proposed coal terminal.

* * *

Thank you for your consideration of these comments. As you are aware, community groups are greatly concerned about the serious health and safety consequences of allowing coal exports to pass through Oakland. The City of Oakland has the chance to act as a local and national leader in committing to protect its residents from a dangerous fossil fuel and should act now to prevent the development of the proposed coal export terminal.

Sincerely,

Irene Gutierrez, Attorney
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On behalf of:
Sierra Club, West Oakland Environmental Indicators Project, Communities For A Better Environment, San Francisco Baykeeper

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## APPENDIX A – MUNICIPAL REGULATION OF HAZARDOUS ACTIVITIES

| Regulation | Examples |
|---|---|
| **A. Outright ban of certain industry activities** | 1. South Portland, ME ban of loading crude oil onto any marine tank vessel. |
| | 2. Dryden, NY and Middlefield, NY's fracking bans |
| | 3. Greeley, CO's total ban on all oil and gas production and exploration |
| | 4. Oakland, CA's nuclear free zone |
| **B. Banning oil and gas activities in certain areas via zoning regulations** | 1. Sharon, OH's ban on building within 200 feet or any oil or gas well head |
| | 2.Springfield Township, OH's ordinance restricting exploration of oil and gas and operation of wells to commercial-industrial zoned districts |
| | 3. County of LA's zoning ordinance prohibiting drilling of oil wells within areas zoned for residential purposes |

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| | 4. City of Commerce, CO's fracking regulations |
| **C. Industry Restrictions (retrofitting plants, curtailing certain methods of production, etc.)** | 1. Chicago's bulk material storage rules |
| | 2. Montana's statewide ban of cyanide leaching in gold mining |
| | 3. Boulder, CO's ordinance regulating the installation and retrofit of solid fuel burning devices |
| | 4. Greeley, CO's regulations |
| **D. Permits for oil/gas operations** | 1. Greeley, CO's ordinance requiring special use permits for oil and gas operations |
| | 2. La Plata County, CO's ordinance requiring special use permit for oil and gas operations |
| | 3. Burkburnett, TX's ordinance requiring drilling permits for oil wells drilled within the city |

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| | 4. Ventura County, CA's ordinance requiring permits for oil exploration and extraction on certain property |
| | 5. St. Clair Shores, MI's license requirement for the delivery of coal, coke, or fuel oil |
| **E. Banning certain activity until there's waste disposal capability** | 1. California state regulation banning nuclear fission thermal power plants until there are adequate short- and long-term waste disposal mechanisms |
| | 2. Wisconsin state regulation banning certification of nuclear power plants unless there are adequate disposal capabilities for the plant's waste and the proposed plant is economically advantageous to ratepayers |
| | 3. Kentucky state regulation banning construction on nuclear power facilities until the public service commission finds that the US government has approved a means of disposal |

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| **F. Voter Approval** | 1. Montana's law reserving the exclusive right to determine whether major nuclear facilities are built and operated in the state for the people of Montana |
| | 2. Maine's law requiring voter approval for the construction of any new nuclear power plant |
| **G. Legislative Approval** | 1. Hawaii's Constitutional provision disallowing the construction of any nuclear fission power plant or the disposal of radioactive material without legislative approval |
| | 2. Rhode Island's law requiring approval from the general assembly for the construction of an oil refinery or a nuclear plant |