

8) Response to Follow-up to Questions from Other Entities / Organizations

From: [Hilary Pearson](#)
To: [Cappio, Claudia](#); [Cole, Doug](#)
Subject: Fwd: Coal proposal
Date: Tuesday, October 06, 2015 4:31:05 PM

Hello Ms. Cappio and Mr. Cole,

I understand you are coordinating feedback on the Oakland Bulk and Oversized Terminal. Please see comments from Sungevity that were shared with Mayor Schaaf earlier this month.

Kind regards,
Hilary Pearson

----- Forwarded message -----

From: **Hilary Pearson** <hpearson@sungevity.com>
Date: Fri, Sep 25, 2015 at 2:16 PM
Subject: Coal proposal
To: officeofthemayor@oaklandnet.com
Cc: "Kalb, Dan" <dkalb@oaklandnet.com>, ACampbellWashington@oaklandnet.com, LGibsonMcElhaney@oaklandnet.com

Hi Mayor Schaaf,

On behalf of Sungevity, I wanted to send a note regarding the proposal to ship coal through the new Oakland Bulk and Oversized Terminal. Following the hearing earlier this week, we wanted to advise you that Sungevity is strongly opposed to coal shipments at the new terminal.

Our Co-Founder, Danny Kennedy, attended the hearing (as a private citizen) and highlighted that this project would send the wrong signal to companies like Sungevity and those that we aim to attract to Oakland as a good place to start/grow their clean tech business. We understand the jobs/economic development arguments in support of the project, but note that those are tied to the facility itself, not the commodity being exported. Furthermore, because coal is a relatively mechanized commodity, we believe far more jobs would likely be created with food or other commodities as alternative business streams for the Terminal as they require more handling.

As former Mayor Quan noted, coal was not on the table when this project went through its various reviews. A no coal bulk goods terminal would bring this project back in line with what was promised to the community. We understand the City is accepting feedback through early October and wanted to share our opposition to any project that would ship coal through the new terminal.

Thank you for your consideration. Please let me know if you have any questions or wish to discuss.

Regards,

Hilary Pearson

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Hilary Pearson // Director, Government Affairs

O [510-496-5522](tel:510-496-5522)

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E hpearson@sungevity.com

Sungevity // Generate Positive // 66 Franklin Street, Oakland, CA 94607

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From: [David Pepper](#)
To: [Cole, Doug](#); [DL - City Council](#); [Cappio, Claudia](#); [Schaaf, Libby](#)
Subject: Related Scientific Papers re: Transport of burned Coal pollutants from China - back to Oakland
Date: Tuesday, October 06, 2015 1:47:12 PM

Here are a few scientific papers on the impact of air pollutant emissions in China on air quality in the US, They show that those millions of tons of coal that might be shipped through Oakland will contribute to the deterioration of the air we breathe. We are all responsible to limit the burning of fossil fuels, Thank you for helping Oakland do the right thing!!!

Papers are as follows:

1. Zhang, Lin, et al. "Transpacific transport of ozone pollution and the effect of recent Asian emission increases on air quality in North America: an integrated analysis using satellite, aircraft, ozonesonde, and surface observations." (2008).

Check out figure 15: map of increased ozone concentrations in US due to anthropogenic emissions in Asia

2a. Zhang, Lin, et al. "Intercontinental source attribution of ozone pollution at western US sites using an adjoint method." *Geophysical Research Letters* 36.11 (2009).

2b. Figure 1 (ppt): clear plot of ozone concentration showing contribution produced over Asia.
Visualization of ozone contribution sourced in Asia shows its relatively large contribution.

3a. Lin, Jintai, et al. "China's international trade and air pollution in the United States." *Proceedings of the National Academy of Sciences* 111.5 (2014): 1736-1741.

3b. Figure 2 (ppt): sulfate, ozone, BC and CO concentration JUST from production for exports.

Note: these numbers focus just on export-related emissions, but they find that "Our focused analysis on US air quality shows that Chinese air pollution related to production for exports contributes, at a maximum on a daily basis, 12-24% of sulfate pollution over the western United States."

Submitted by Dr. David Pepper,
Medical Advocates for Health Air, Oakland CA

Oct 6, 2015

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Ride Safe
Ride Often
Love Daily

From: [John Behrens](#)
To: [Cole, Doug](#)
Subject: Public Comment - Coal Transport thru Oakland
Date: Tuesday, October 06, 2015 1:48:50 PM
Attachments: [Coal_terminal_comment_John Behrens.pdf](#)

Please see attached PDF for comment on the proposed Coal Terminal.

Thank you,
John Behrens

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thankful and content
John Behrens
<http://www.johnbehrens.com/>
Director of Photography and High Voltage
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510-301-7771

1185 30th St
Oakland, CA 94608
October 6, 2015

Oakland City Council
Attn: Douglas Cole
dcole@oaklandnet.com

Dear City Council and Staff,

I am writing as a West Oakland neighbor, homeowner, new father, and business owner. I first moved to West Oakland 20 years ago.

I feel strongly that coal and any other fossil fuels should be prohibited from the bulk terminal development. Transport of coal or fossil fuels only benefits CCLG and Bowie energy and not Oakland. The rent and business tax that the developer would pay in connection with the terminal will be paid regardless of whether coal or fossil fuels are exported or some other commodity; but there will be negative health effects with an associated cost on West and East Oakland if coal or fossil fuels are transported and exported from the break bulk terminal. Currently the city of Oakland will receive no tariffs or taxes on the export of coal or fossil fuels from the break bulk terminal to pay for the increased health costs of exporting hazardous and toxic materials.

I did research into the questions posed by the city council and staff. I asked an environmental biologist who works for the industry about exactly what must be undertaken by the city and the developer and got his responses under the condition of anonymity. I also researched how the whole state will be affected.

- Project – However it's treated, it should be made clear that any activity that is not fully described and studied in the EIR with a quantitative assessment of impacts requires a new CEQA review. Limitations should expressly be presented regarding tiering off an initial CEQA document.
- Adjacent Neighbors – This should include everyone along the mainline rail within the state lines of California as these are the potentially affected parties (health risks, noise, hazardous releases, traffic challenges, etc.) for which reasonable jurisdiction exists. Documentation should explicitly address immediate neighbors (e.g., everyone within 2 miles of the proposed facility), City residents, and Californians along the rail route.
- Health and Safety –The City correctly requests a quantitative health risk assessment and a safety assessment (these should be two separate studies); however, the City erroneously limits the study to the impacts of the transportation of coal from rail to ship at the Break Bulk Terminal. The studies should address all potentially affected parties and all project activities, including the transportation of coal within California and the City of Oakland.
- Regarding preemption, Federal law prohibits local jurisdictions from interfering with interstate commerce. However, the Port reserves its rights to restrict the type, size, and timing of trains, ships, or vehicles that enter the facility. As such, if coal is shipped to the Port in cars that do not meet the standards agreed to (e.g., covered cars), the Port is not required to allow them on the property and is in no way limiting interstate commerce. As such, requiring specific health and safety measures such as covered rail cars is not preempted.
- CEQA review is not preempted. The purpose of CEQA is to inform the public of the environmental impacts of a proposed action. As such, all potential impacts should be studied, including the transport by rail within the state lines of California as is being done currently for multiple EIRs addressing crude by rail. As part of a CEQA review, mitigation measures are typically developed to avoid and minimize impacts. In some cases, proposed mitigation measures would be preempted (those that would interfere with interstate commerce). However, most mitigation measures would not be preempted.
- Water mitigations for fugitive coal dust will create additional problems: contaminated wastewater and excessive use of water when the state is in a dangerous drought. What are the developer's plans for reduced water use and wastewater treatment?

I believe these comments may be helpful in working to determine the health and safety of the proposed inclusion of coal for the break bulk terminal. Thank you for the opportunity to comment, we are counting on you to protect us.

Sincerely,

John Behrens

From: [lora jo foo](mailto:lora.jo.foo)
To: [DL - City Council](#); [Office of the Mayor](#); [Cappio, Claudia](#); [Monetta, John](#); BParker@oaklandcityattorney.org; [Cole, Doug](#)
Subject: Fwd: No Coal in Oakland Comment for 9/21 Hearing on Coal
Date: Tuesday, October 06, 2015 3:46:08 PM
Attachments: [Comment - No Coal in Oakland.pdf](#)

Dear Mr. Monetta and Mr. Cole,

I submitted the attached No Coal in Oakland Comment on September 21, 2015 but do not see it listed on the City's website containing documents for the Public Hearing. We are submitting it again in the abundance of caution to ensure it is part of the administrative record.

Sincerely,

lora jo foo
No Coal in Oakland
510-282-9454

----- Forwarded message -----

From: **lora jo foo** <ljfoo70@gmail.com>
Date: Mon, Sep 21, 2015 at 8:10 AM
Subject: No Coal in Oakland Comment for 9/21 Hearing on Coal
To: "Monetta, John" <jmonetta@oaklandnet.com>

Dear Mr. Monetta,

No Coal in Oakland submits the attached comment on behalf of itself and Sunflower Alliance, 350 Bay Area, System Change Not Climate Change, and West Oakland Neighbors—four community organizations with members active in No Coal in Oakland for inclusion in the administrative record for the September 21, 2015 public hearing on coal.

Please respond with acknowledgement of receipt of this Comment.

Sincerely,

lora jo

lora jo foo
No Coal in Oakland
[510-282-9454](tel:510-282-9454)

No COAL IN OAKLAND

1773 10TH STREET
OAKLAND, CA 94607
510-282-9454

September 18, 2015

Via Electronic Mail

Mayor Libby Schaaf (officeofthemayor@oaklandnet.com)

Councilmember District 1 Dan Kalb (dkalb@oaklandnet.com)

Councilmember District 2 Abel Guillén (aguillen@oaklandnet.com)

Councilmember District 3 Lynnette Gibson McElhaney
(lmcelhaney@oaklandnet.com)

Councilmember District 4 Annie Campbell Washington
(acampbellwashington@oaklandnet.com)

Councilmember District 5 Noel Gallo (ngallo@oaklandnet.com)

Councilmember District 6 Desley Brooks (dbrooks@oaklandnet.com)

Councilmember District 7 Larry Reid (lreid@oaklandnet.com)

Councilmember At-Large Rebecca Kaplan (rkaplan@oaklandnet.com)

Oakland City Hall

1 Frank Ogawa Plaza

Oakland, CA 94612

Hon. Mayor Libby Schaaf and Councilmembers:

No Coal in Oakland submits this comment on behalf of itself and Sunflower Alliance, 350 Bay Area, System Change Not Climate Change, and West Oakland Neighbors—four community organizations with members active in No Coal in Oakland. No Coal in Oakland includes environmental, labor, business, community, and faith-based activists who oppose the use of the City of Oakland's new maritime trade facility to ship coal overseas.

The overwhelming majority of the Oakland community strongly opposes the transport, storage, and loading of millions of tons of coal along its waterfront due to concerns for public health and safety. There is a growing and well-informed consensus among scientists, public officials, and the public at large that expanding the use of coal poses great dangers to ourselves and generations to come. On August

29, 2012, the California Legislature passed a resolution opposing the export of coal from the United States to countries with weaker environmental regulations.¹ On February 27, 2014, citing “environmental impacts, climate change, public-health hazards, economic pitfalls, and public opposition,” the Oakland Port Commission unanimously rejected an 8.3 million-ton-per-year coal export project at the Port’s Howard Terminal.² On June 17, 2014, the Oakland City Council passed a resolution opposing the transport of fossil fuels by rail through the city and, in particular, opposing transport of coal for export.³ Berkeley, Richmond, Emeryville and Albany have all passed resolutions opposing coal, petroleum coke, and oil running through their cities and into Oakland by rail.⁴

What may once have been the isolated resistance of a small number of environmentalists to export of fossil fuels is now the mainstream view of the Bay Area public and most of our elected officials. California and the Bay Area in particular have been leading the way on climate and clean energy policies. Only weeks ago, the Legislature adopted SB185, which would divest our largest public pension systems from coal investments. In April, Governor Jerry Brown, our former mayor, signed an executive order strengthening AB32, California’s groundbreaking Global Warming Solutions Act, by requiring a reduction in California’s carbon pollution to 40 percent below 1990 levels by 2030. The Governor also called for expanding our clean energy economy by requiring that half of our state’s energy come from clean resources by 2030. In a recent trip to the Vatican, Governor Brown declared that unless we leave 90% of our coal in the ground, we will face climate disaster.⁵

But these fine resolutions and executive proclamations will mean nothing if the progressive city of Oakland builds new infrastructure specifically dedicated to the

¹ Assembly Joint Resolution No. 35—Relating to the Exploitation of Coal (2012); *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/ajr_35_bill_20120918_chaptered.pdf

² Port of Oakland, *Supplemental Agenda Report* (Feb. 27, 2014) at 110-112; *available at* http://www.portofoakland.com/pdf/about/meetings/2014/boar_shee_140227.pdf.

³ City of Oakland, Resolution No. 85054 C.M.S. (June 17, 2014) (Resolution opposing the transportation of hazardous fossil fuel materials, including crude oil, coal, and petroleum coke, through the City of Oakland); *available at* <https://oakland.legistar.com/LegislationDetail.aspx?ID=1747455&GUID=D41B7760-10B0-455E-B1F5-88894FBAD097>.

⁴ Loni Hancock, Rob Bonta, Tony Thurmond, *Let’s Keep Coal Out of Oakland Port*, S.F. Chronicle (July 20, 2015); *available at* <http://www.oaklandelects.com/keepcoaloutofoaklandport.html>.

⁵ David R. Baker, *As California pumps out oil, Gov. Brown says world must cut back*, S.F. Chronicle (July 21, 2015); *available at* <http://www.sfgate.com/business/article/As-CA-keeps-pumping-oil-Gov-Brown-says-world-6397560.php> (“We are going to have to set a clear goal,” Brown told a crowd of mayors and public officials from around the world. “And that goal is almost unimaginable. One-third of the oil that we know exists as reserves can never be taken out of the ground. Fifty percent of the gas can never be used and over 90 percent of the coal. Now, that is a revolution.”)

export of millions of tons of coal each year for many decades to come.⁶ Everyone who has studied the problem of climate change now understands that we must drastically cut our consumption of fossil fuels in the coming decades and, most significantly, we must rapidly decrease the use of coal, the dirtiest and biggest contributor to climate change of all fossil fuels.

For years, the developer of the Oakland Global Trade and Logistics Center (“Oakland Global”) gave repeated assurances that coal would be no part of the mix of commodities that would be shipped through Oakland’s newest export facility, the Oakland Bulk and Oversized Terminal (“OBOT”). Yet a major long-term commitment to coal exports—a dubious business plan given the rapidity with which the world is turning away from coal—is now being passed off as the only way development at the former Oakland Army Base can succeed.

Oaklanders recently learned that, contrary to the developer’s repeated assurances, there have been secret negotiations with four counties in Utah to export up to 9 million tons of Utah coal per year from the new terminal. Domestic demand for coal is flagging as the United States, led by the State of California, turns away from use of our most toxic fossil fuel. Predictably, the coal mining industry is looking for ways to survive and expand. Utah’s leading coal counties have offered to contribute \$53 million in order to secure a shipping route to send their coal overseas.

We know what will happen if this plan comes to fruition. Mile-long trains bringing Utah coal to Oakland will elevate pollution of vulnerable communities along the tracks, endanger the health and safety of the project’s neighbors and workers, and tarnish Oakland’s reputation as a forward-looking city on the issue of climate change. The bulk export terminal that was presented a few years ago as a progressive win-win for Oakland’s neighborhoods, workers, and our local economy will become a symbol of the failure of our political process.

The City Council has the power to prevent this wrong turn for Oakland. Under its agreement with the developer, the City reserved the right to adopt regulations to protect public health and safety. As outcry over the plan to ship coal through Oakland has grown, rumors and misinformation have been spread that turning down the \$53 million will kill the whole \$1.2 billion dollar development of Oakland Global causing the loss of thousands of jobs. The truth is that tying the long-term future of

⁶ See Steven Leahy, *A Hard Deadline: We Must Stop Building New Carbon Infrastructure by 2018*, The Leap (July 2, 2015) (available at <http://theleap.thischangepseverything.org/a-hard-deadline-we-must-stop-building-new-carbon-infrastructure-by-2018/> explains that, at the present pace of business as usual and given the long lifespan of many capital investments, we will have built sufficient carbon infrastructure to blow through the carbon budget for a 2 degrees Celsius temperature rise unless facilities are shuttered before their end of their intended life cycles.

Oakland's new maritime facility to shipping coal to Asia is sheer folly that could easily leave Oakland with a giant White Elephant sitting next to the gateway to our city where the Bay Bridge touches land. The false portrayal of coal exports as Oakland's pathway to abundant jobs is a fairy tale that the developer would not have dared present a few years ago when he asked this City to entrust him with development of the City's largest undeveloped waterfront property.

In this comment, we will address both the health and safety impacts of coal exports and the erroneous legal and economic arguments presented by coal proponents to dissuade the City Council from taking appropriate action.

I. Background

In 2012, when the City Council awarded development rights at the former Oakland Army Base to developer Phil Tagami, head of the California Capital and Investment Group ("CCIG"), Tagami assured City Councilmember Dan Kalb that coal wouldn't be shipped through Oakland's new terminals.⁷ On October 23, 2012, Oakland entered into a master development and leasing agreement, the Lease Disposition and Development Agreement ("LDDA"), with a joint venture between Tagami's CCIG and CCIG's partner Prologis, the world's largest industrial property and logistics company.⁸

Tagami reiterated his commitment to a coal-free development in the December 2013 Oakland Global newsletter. "It has come to my attention," he wrote, "that there are community concerns about a purported plan to develop a coal plant or coal distribution facility as part of the Oakland Global project. This is simply untrue.... CCIG is publicly on record as having no interest or involvement in the pursuit of coal-related operations at the former Oakland Army Base."⁹

Despite these assurances, Tagami soon took a different course in secret. In April 2015, the Deseret News, Utah second-largest newspaper, broke the story that four

⁷ Mike Blasky, *Oakland City Council to have public hearing on exporting coal*, Oakland Tribune (Jul. 7, 2015) ("He [Phil Tagami] said it to my face," Kalb said. "He said, 'Dan, climate change is the premier issue of the day. I care very much about my children and I would never let coal go through any of my property or terminal.'"); available at http://www.insidebayarea.com/breaking-news/ci_28499049/oakland-city-council-have-public-hearing-exporting-coal.

⁸ Peter Slatin, *ProLogis Becomes World's Biggest Industrial Property Company—Now What?*, Forbes (June 20, 2011); available at <http://www.forbes.com/sites/peterslatin/2011/06/20/prologis-becomes-worlds-biggest-industrial-property-company-now-what/>.

⁹ Phil Tagami, Oakland Global Newsletter (Dec. 2013). Tagami's statements in the 2013 newsletter have been removed from public view on the website of Oakland Global. However, copies of the original emailed newsletter were retained by the Sierra Club and others, and are available from No Coal in Oakland upon request.

counties in Utah—Carbon, Sevier, Sanpete, and Emery—were offering \$53 million to ensure that approximately half of OBOT’s facilities would be dedicated to exports of Utah coal.¹⁰ Reportedly, Tagami’s company initially lobbied Utah coal interests to invest in the bulk cargo facility. Tagami then cut a deal to turn over the operation to a newly formed company, Terminal Logistics Solutions (TLS), for a lease to operate OBOT after it is built by CCIG.¹¹ TLS is run by Jerry Bridges and Omar Benjamin, both former executive directors of the Port of Oakland.

City officials, West Oakland neighbors, local environmental activists, and the larger Oakland community were taken by surprise by Tagami’s bold moves. Acceptance of Utah’s investment will commit OBOT to handling massive shipments of coal, somewhere between 4 and 10 million tons per year,¹² a use for OBOT that was never disclosed to the public or studied in the environmental review of redevelopment plans for the Oakland Army Base. The 2012 Initial Study/Addendum to the Oakland Army Base EIR does not mention coal, and simply states that the facility will handle “non-containerized bulk goods,” and “oversized or overweight cargo.”¹³ The key development and leasing agreements relating to the city-owned land on which OBOT will be built contain no mention of shipping coal through the facility.

The developer who assured all comers that coal was no part of the plan now asserts that he is entitled lease the space to a private company to export anything except “nuclear waste, illegal immigrants, weapons and drugs,” leaving concerned citizens and community with seemingly no recourse.¹⁴ However, according to section 3.4.2 of the Development Agreement, the City retains the right to enact new regulations for the protection of public health and safety provided the “City 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 [or] adjacent neighbors ... in a condition substantially dangerous to their health and safety.” (See D.A. 3.4.2.)

¹⁰ Amy O’Donoghue, *Utah invests 53 million in California port for coal, other exports*, Deseret News (April 27, 2015); available at <http://www.deseretnews.com/article/865627254/Utah-invests-53-million-in-California-port-for-coal-exports.html?pg=all>.

¹¹ More recently, Phil Tagami has explained the relationship with TLS in the following terms: “As to OBOT in the West Gateway portion of Oakland Global, CCIG has entered into an exclusive Option Agreement with Terminal Logistics Strategies (TLS) for the potential operation of OBOT. CCIG is the developer of OBOT, but will not be its operator.” Matier & Ross, *Opponents of Oakland Coal Shipping Target Governor’s Pal*, S.F. Chronicle (July 25, 2015); available at <http://www.sfchronicle.com/bayarea/article/Opponents-of-Oakland-coal-shipping-target-6405576.php/>.

¹² The scale of the potential shipments is not known for certain. Press reports vary and no information can be found at the developer’s website. See <http://www.oaklandglobal.com/>.

¹³ Oakland Army Base 2012 Initial Study/Addendum, at 30.

¹⁴ Doug Oakley, *Unlikely partners: Utah investing \$53 million to export coal through Oakland port*, Contra Costa Times (April 24, 2015); available at http://www.contracostatimes.com/breaking-news/ci_27981684/unlikely-partners-utah-investing-53-million-export-coal.

As we will discuss further in section V of this comment, this provision in the Development Agreement provides a fully adequate legal basis for the City to ban coal exports from the City's land.

II. Coal Exports Pose a Substantial Danger to the Health and Safety of Oakland Global's Neighbors and Workforce

Coal export poses unique and substantial danger to the health and safety of citizens in adjacent neighborhoods, workers at the site, and to the Oakland community as a whole.

- Coal dust poses serious health concerns for a neighborhood already burdened with a history of environmental injustices and ill-equipped to cope with additional stresses.
- Confined and/or covered coal transportation and terminal operations would shift the burden of toxic pollution to workers at the site while also exacerbating risks of fire during transport, storage, and loading.
- Coal dust and leachates can pollute waterways, often with long-lasting impacts.
- Exporting coal will drive global climate change at great cost to Oakland families and businesses. Oakland and its citizens are extremely vulnerable to sea level rise, extreme heat and associated diseases, sewer overflow during storm surges, and increased fire risk.

A. Coal dust is particulate matter that poses serious health and safety concerns

The transport, unloading, and reloading of raw coal will result in a certain proportion of that coal fracturing into dust and becoming airborne. During the journey from coal mines to their destinations, coal trains lose part of their load as "fugitive" dust. Coal dust can become airborne in particle sizes smaller than 500 microns, with particles smaller than 10 microns (PM₁₀) being particularly significant, as particles of that size or smaller can be inhaled into the respiratory alveoli.

The American Lung Association considers all such particulate matter, specifically including coal dust, dangerous to breathe.¹⁵ The United States Environmental Pro-

¹⁵ American Lung Association, <http://www.epa.gov/pm/health.html> www.lung.org/healthy-air/outdoor/resources/coarse-particle-fact-sheet.pdf

tection Agency (EPA) cites numerous scientific studies that link particulate matter of any origin with a series of significant health problems, including:

- premature death in people with lung or heart disease,
- nonfatal heart attacks,
- irregular heartbeat,
- aggravated asthma,
- decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.¹⁶

Particulate matter less than 2.5 microns (PM_{2.5}) is regularly spewed from coal trains and poses serious health risks beginning at low levels of exposure. In his September 16, 2015 comment to the City Council Dr. Bart Ostro, former Chief of the Air Pollution Epidemiology Section, California Environmental Protection Agency, cites recent studies showing the average peak in nearby concentrations of particles less than 2.5 microns or PM_{2.5} from coal trains were twice that from freight trains.¹⁷ PM_{2.5} has been determined by The World Health Organization (WHO) to have the greatest worldwide impacts of any environmental exposure with an estimated 3 million deaths per year.¹⁸ Estimates for California range from 10,000 to 30,000 per year.¹⁹ Studies from around the world and from California demonstrate important associations between daily exposure to PM_{2.5} and a wide range of health impacts including respiratory symptoms, school and work loss, asthma exacerbation, emergency room visits, non-fatal heart attacks, adverse birth outcomes, hospital admissions, and death from cardiovascular disease.²⁰ The populations at greatest particulate risk (though other groups are susceptible) include children, asthmatics and older individuals with pre-existing cardiovascular or respiratory disease.²¹ The California EPA and WHO, have specified there is no clear cut safe level for exposure to PM_{2.5}. Dr. Ostro concludes that “This indicates that every exposure adds to the likelihood of an adverse health outcome.”²² If the City Council allows coal exports, West Oakland community’s local exposure to PM_{2.5} from coal trains will be almost double that of freight trains.²³

¹⁶ Environmental Protection Agency, *Integrated Science Assessment for Particulate Matter* (2009); available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546>.

¹⁷ Comment of Dr. Bart Ostro (Sept. 16, 2015), attached hereto as Attachment A.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

The health impacts of respirable coal dust on underground coal miners, exposed to high levels of coal dust for extended periods, are well known and incontrovertible.²⁴ However, some of the extreme adverse health effects noted in studies of coal miners have been shown to occur with much lower exposures to coal dust. A recent study by researchers from the University of West Virginia examined a population of relatively young miners who developed the most severe form of CWP even though their exposure was limited to currently legal and well-regulated levels of coal dust.²⁵

Animal studies have identified a mechanism that explains how smaller exposures can nonetheless have extreme consequences. Using a rat model, researchers examined the pulmonary burden throughout a wide range of coal dust exposures and found that pulmonary clearance mechanisms tend to sequester the dust in lymphatic tissue and the interstitial space between alveoli.²⁶ This sequestration renders the further clearance mechanisms of the lung inoperable and facilitates an inflammatory cascade, similar to the pathogenesis of silicosis. Studies such as this cast doubt on the simplistic “threshold” model of health risks from coal dust exposure, as pulmonary inflammation and the resultant fibrosis were found over the entire range of exposures. In addition, the synergy of respirable coal dust with other pollutants, such as diesel particular matter, may accelerate lung tissue damage beyond what would be predicted by simply extrapolating from the epidemiological mine data.²⁷

The epidemiological effects of respirable coal dust in lower concentrations, or exposure for shorter periods, as can occur for persons living close to transport lines have not been investigated to the same degree as effects on miners. The exposure may be less but cumulatively may be quite significant. A 1993 study on a West Virginia

²⁴ G.J. Hathaway et al., Proctor and Hughes’ chemical hazards of the workplace, 3d Edition. (1991) New York, NY: Van Nostrand Reinhold; W.M. Marine et al., *Clinically important respiratory effects of dust exposure and smoking in British coal miners*. Am. Rev. Resp. Dis. (1988) 137:106-112

²⁵ W.A. Wade et al., *Severe occupational pneumoconiosis among West Virginia coal miners: 138 cases of progressive massive fibrosis compensated between 2000-2009*. Chest 139(6): 15458-1463 (2010). One of the questions raised by the City Administrator’s notice of hearing dated August 28, 2015 was whether “Existing Federal, State, Regional and/or Local Regulations Adequately Protect Health and Safety.” If the existing regulations are inadequate to protect miners whose health issues have been widely known for decades, it seems improbable that adequate regulations exist to protect workers or communities.

²⁶ J.H. Vincent et al., *Accumulation of inhaled mineral dust in the lungs and associated lymph nodes: implications for exposure and dose in occupational settings*. Annals of Occupational Hygiene 31(3): 375-393 (1987).

²⁷ M.T. Karagiane, *The effect of inhaled diesel emissions and coal dust in rats*. American Industrial Hygiene Journal. Volume 42(5):382-391 (1981). Because of the acute sensitivity of lung tissue to airborne contaminants, it has been known for a while that there is no safe lower limit for smoking tobacco products. See, e.g., J. Lee Westmaas, *Light Smoking Risky As a Pack a Day?*, American Cancer Society (2013), at <http://www.cancer.org/cancer/news/expertvoices/post/2013/01/02/light-smoking-as-risky-as-a-pack-a-day.aspx>.

rail line, transporting bituminous coal similar to the coal from Utah, showed loss of coal dust of up to a pound of coal per mile per car.²⁸ The Burlington Northern Santa Fe (BNSF) Railroad has performed studies of fugitive dust emissions along their own rail lines, but these data have not been made public.²⁹

Further, as dust spews from rail cars, it also carries with it harmful substances like mercury, lead, cadmium, arsenic, manganese, beryllium, and chromium.³⁰ These heavy metal contaminants are known to have many adverse health impacts. The specific risks depend on how much coal dust escapes, the exposure of individuals, and any particular vulnerabilities they may have. Substantial evidence exists that those most likely to be affected by particle pollution are the elderly, children, and people with heart or lung disease.³¹ In one study of a coal terminal in Liverpool, England, researchers found that, even after correcting for economic and environmental factors at home, children exposed to coal dust from the nearby docks were more likely to miss school because of respiratory problems, including wheezing and coughing.³²

In Norfolk, Virginia, home of the Lamberts Point Coal Terminal, soil samples have been found to contain up to 20 percent coal by weight at a site less than 1 kilometer from the docks, 3 percent coal at a site 5 kilometers away, and 1 percent coal as far as 12 kilometers away. High coal levels in soil along railroad tracks suggest that trains are a pathway for contamination. Researchers in Norfolk also found arsenic levels were five times higher than background soil concentrations nearby, and hy-

²⁸ Simpson Weather Associates, *Norfolk southern rail emission study: consulting report prepared for Norfolk Southern Corporation*. Charlottesville, VA (1993).

²⁹ Queensland Government Environmental Protection Agency, *Environmental evaluations of fugitive coal dust emissions from coal trains Goonyella, Blackwater, and Moura coal rail systems, Queensland rail limited*. Connell Hatch and Co. (2008). Final report (not publicly released).

³⁰ Paul R. Epstein et al., *Full Cost Accounting for the Life Cycle of Coal*, 1219 *Annals N.Y. Acad. Sci.* 73, 74-75 (2011), available at

http://www.chgeharvard.org/sites/default/files/epstein_full%20cost%20of%20coal.pdf; see also Sharma, PK, Singh G. 1991. *Distribution of suspended particulate matter with trade element composition and apportionment with possible sources in Raniganj coalfield India*. Environmental Monitoring and Assessment 22:237-244; Adebowale Adenui, U.S. Env'tl. Prot. Agency, Bioremediation of Arsenic, Chromium, Lead, and Mercury 14, 20, 26, 34 (2004), available at nepis.epa.gov/EPA/html/DLwait.htm?url=/Exe/ZyPDF.cgi?Dockey=900Z0C00.pdf

³¹ U.S. Env'tl Prot. Agency, *Health Effects of Particulate Matter*, OAQPS Fact Sheet (July 17, 1997, last updated on Aug. 28, 2015); available at <http://www.epa.gov/region07/air/quality/pmhealth.htm/>.

³² Bernard Brabin et al., *Respiratory morbidity in Merseyside schoolchildren exposed to coal dust and air pollution*, *Archives of Disease in Childhood*, 1994; 70: 305-312, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1029784/>.

pothesize that the coal export terminal is at least partially responsible for the difference because coal often contains arsenic.³³

Surrounded by four freeways and adjacent to the Port where truck track converges from throughout Northern California, the West Oakland community already is overburdened by air pollution. According to the California Department of Public Health, West Oakland residents experience an alarmingly high rate of emergency room visits due to asthma: 184 visits per 10,000 residents.³⁴ Other parts of Oakland see rates as low as 38 emergency room visits per 10,000 residents.³⁵ The state average is 50 ER visits per 10,000 residents.³⁶ Any additional respiratory burden that would result from coal trains passing through Oakland would be taxing communities whose health has already been compromised.³⁷

The developer and TLS's response to these issues is that coal exports through Oakland will not pose a health or safety threat because the mitigation measures they will adopt will eliminate any substantial risk. The next sections of this comment will address these alleged solutions.

B. No measures exist that will prevent exposure of the coal terminal's neighbors to toxic coal dust from passing trains

Although coal dust contains toxic elements that are regularly spewed into ecosystems and communities along the railways, it is currently unregulated.³⁸ There is no law that requires coal train cars to be covered. Nor have covered rail coal cars been proven to be commercially viable or effective in controlling dust. This is because there are no covered coal cars in use anywhere in the United States.

Despite this, TLS claims the coal will arrive in newly designed covered railcars from point of origin to its new terminal and back that will eliminate fugitive coal dust from blowing off the trains.

³³ William J. Bounds and Karen H. Johannesson, *Arsenic Addition to Soils from Airborne Coal Dust Originating at a Major Coal Shipping Terminal*, *Water, Air, & Soil Pollution*, June 21, 2007, 185, 195-207, http://www.springerlink.com/content/98146r_11160021j13/; and Joe Lawlor, *Coal Dust, Piles an Issue for Southeast Newport News*, July 16, 2011, http://articles.dailypress.com/2011-07-16/news/dp-nws-cp-nn-coal-dust-20110716_1_coal-dust-coal-piles-coal-terminals.

³⁴ Cal. Dept. of Pub. Health, *Asthma Hospitalization and Emergency Room Visits Query Results*; available at http://www.ehib.org/page.jsp?page_key=125&year=2012&pmn=EVENT%3DASHO_TYPE%3DR10K_RACE%3DTOTL_AGE%3DTOTL_SEX%3DTOTL_MODEL%3DCONV&agezip=TOTL&geog=ZIP

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ See Comment of Paul B. English (Sept. 14, 2015), attached hereto as Attachment B.

³⁸ Tovah R. Trimming, *Derailing Powder River Basin Coal Exports: Legal Mechanisms to Regulate Fugitive Coal Dust From Rail Transportation*, 6 *Golden Gate U. Env'tl L. J.* 321 (2013); available at <http://digitalcommons.law.ggu.edu/gguelj/vol6/iss2/7/>.

While a half dozen companies have worked on designing rail car covers, there is no indication that any have been manufactured or that they will work satisfactorily. The coal industry states that a basic coal car cover has to meet several design requirements: (1) it must not slow down the process of loading; (2) it must not twist or turn in the wind; (3) it must not freeze up or malfunction whenever there is snow or ice or rain; (4) it must not deform or fly off at maximum train speeds; (5) it must open and close in all kinds of weather without delaying the dumping process; (6) it must provide a safe and secure retrofit to a rail car; and (7) it must not cost so much that no one would ever buy it.³⁹

Since there are currently no covered coal cars in operation in the U.S., it is impossible to test any of the designs to determine if they meet these seven requirements that would make them commercially viable and actually do what they purport to do, i.e., prevent the escape of fugitive coal dust. It is a bedrock principle of California environmental law that government cannot rely on future mitigation of adverse impacts by methods and technologies that do not yet exist.⁴⁰ And as discussed below in the section on coal storage, we know that coal and coal dust can combust in enclosed spaces. The fact that covered train cars will not allow heat to escape exacerbates the risk of fire during transport.⁴¹ However, because there are no covered coal cars in operation, we have no way of knowing at this point whether covered coal cars might burst into flames, and Oakland should not be the laboratory for this research.

Moreover, TLS's promise of covered coal cars is illusory in other ways. In the United States, with limited exceptions, the rails are regulated by the federal government and direct regulation by state and local governments is preempted. Private rail companies may adopt rules for transport of particular goods to protect their own interests.⁴² But such self-regulation by the industry can be changed by the industry and does not represent any guarantee that coal trains coming through Oakland will be covered now or in the future. Under section 3.4.2 of the Development Agreement, the City can legally ban coal exports if it determines that coal exports from

³⁹ Dave Gambrel, *Coal Dust Control in the Pacific Northwest*, Coal Age (May 29, 2013); available at <http://www.coalage.com/departments/transportation-tips/2736-coal-dust-control-in-the-pacific-northwest.html>.

⁴⁰ Mitigation measures must be "fully enforceable" through permit conditions, agreements, or other legally binding instruments. Pub. Res. Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2).

⁴¹ Multnomah Cty. Health Dept., *The Human Health Effects of Rail Transport of Coal Through Multnomah County, Oregon, A Health Analysis and Recommendation for Further Action* (Feb. 2013); available at <https://multco.us/file/9977/download/>.

⁴² See, for example, BNSF's rules for loading coal cars which it explicitly ties to efforts to prevent damage to its tracks and the track bed. Notably, BNSF does not require covered coal cars.

Oakland pose an unacceptable risk to public health and safety, but federal pre-emption of rail transportation regulations means the City cannot stop uncovered coal trains passing through the City of Oakland and require them to be covered. TLS has proposed no way to make any such condition binding on shippers who would export coal through Oakland under the Utah agreement.⁴³ Under these circumstances, the City must assume that the thousands of trains coming to Oakland as a result of OBOT's dedication to coal will be whatever the shippers can legally get away with under existing law: i.e., uncovered coal cars.

Other attempts to control fugitive coal dust, such as the use of surfactants, also are problematic. The BNSF railway, in order to decrease fugitive coal dust that accumulate on rail track ballasts and prevent proper drainage, thereby leading to train derailments, has required that all coal cars be sprayed with a surfactant, a dust suppression topper agent. According to BNSF railway, even these sprays only reduce coal dust by 85 percent compared to untreated train cars.⁴⁴ However, this requirement still allows up to fifteen percent of coal dust to be lost. But more importantly, there is no evidence of independent verification that fugitive coal dust is reduced by 85% by the use of surfactants. In a series of cases before the federal Surface Transportation Board, utility companies that are required to follow BNSF Railway's rules for shipping coal have argued that there is insufficient evidence for the effectiveness of these substances.⁴⁵

Moreover, according to the EPA, dust suppression topper agents may have adverse environmental and health impacts, including soil contamination and air pollution.⁴⁶ "Potential environmental impacts include surface and groundwater quality deterioration, soil contamination; toxicity to soil and water biota, toxicity to humans dur-

⁴³ TLS disingenuously asserts that "the Terminal we are designing and plan to operate will meet or exceed ALL California Environmental Quality Act (CEQA) requirements." See Letter from Jerry A. Bridges to Mayor Libby Schaaf, dated July 15, 2015 (Agenda Report, Attachment C) at 2. CEQA does not contain substantive environmental standards, much less requirements that can be "exceed[ed]." CEQA is a procedural law that requires an environmental review process, but the developer and TLS maintain that the coal export plan revealed this year requires no CEQA review.

⁴⁴ BNSF, *Coal Dust Frequently Asked Questions*; available at <http://www.bnsf.com/customers/what-can-i-ship/coal/coal-dust.html> (accessed Sept. 14, 2015).

⁴⁵ The Human Health Effects of Rail Transport of Coal Through Multnomah County, Oregon, A Health Analysis and Recommendation for Further Action (Feb. 2013); available at <https://multco.us/file/9977/download>.

⁴⁶ Thomas Piechota et al. eds., *Potential Environmental Impact of Dust Suppressants: "Avoid Another Times Beach," an Expert Panel Summary*, U.S. Env'tl. Prot. Agency (2002), at v; available at www.epa.gov/esd/cmb/pdf/dust.pdf.

ing and after application, air pollution, accumulation in soils, changes in hydrologic characteristics of the soils, and impacts on native flora and fauna populations.”⁴⁷

The jury is still out on whether surfactants or covered cars will decrease the diffusion of coal dust. Given this uncertainty, the only conclusion the City Council can reach is that coal dust from passing trains will endanger communities closest to the rail lines, including those who are resident in the neighborhoods adjacent to Oakland Global.

C. Enclosed storage and transfer of coal at OBOT pose additional threats to health and safety

To control fugitive dust, TLS claims that CCIG and TLS will build a domed storage system and encapsulated conveyors to move the coal from storage to waiting ships. It has provided the City with photographs of a completely enclosed warehouse and dome storage structures.

But the developer has publicly asserted that CCIG is entitled to build whatever coal export facility it wants on land next to the Bay Bridge toll plaza and the Gateway Park without further environmental review. Taking this claim at face value, the City cannot assume that he will follow through with his assurances that he will build covered facilities to store coal between its arrival by rail and its loading onto ships. He might well decide that storing coal in huge piles outside, as is often done at other coal export facilities, will make the Oakland Global project more economically viable and the City would be powerless to insist on a covered facility.⁴⁸

The reason that this is an attractive, if highly polluting, choice relates to specific risks related to storing coal in enclosed structures. Coal is flammable and susceptible to spontaneous combustion.⁴⁹ Spontaneous combustion of coal arises from the process of self-heating, resulting eventually in its ignition without the application of external heat. Coal exposed to air absorbs oxygen at the uncovered surface. Some of the exposed coal substance absorbs oxygen faster and the different rates of oxidation result in the formation of gases, mainly carbon monoxide, carbon dioxide, and water vapor along with the generation of heat during the oxidation process. If the rate of dissipation of heat is slow with respect to the generation of heat by oxidation

⁴⁷ *Ibid.*

⁴⁸ See CBS SF Bay Area, *Billion Dollar Project Will Bring Millions of Tons of Coal to Area Next to Bay Bridge Toll Plaza* (July 1, 2015) (quoting Jerry Bridges as stating, “The CEQA entitlement gives us every right to build and transport what we need to transport in order to be a viable and feasible project.”); available at <http://sanfrancisco.cbslocal.com/2015/07/01/billion-dollar-rail-terminal-for-coal-set-for-area-next-to-bay-bridge-toll-plaza/>.

⁴⁹ IEA Clean Coal Centre, *Propensity of Coal to Self-Heat*, Profiles (Dec. 2010); available at [http://www.iea-coal.org/documents/82476/7685/Propensity-of-coal-to-self-heat-\(CCC/172/](http://www.iea-coal.org/documents/82476/7685/Propensity-of-coal-to-self-heat-(CCC/172/).

there is a gradual buildup of heat, and temperature can reach the ignition point of the coal. This causes fires.⁵⁰

Although at ambient temperature, the reaction can be so slow that it is unnoticed, when heat accumulates the temperature rises and the reaction rate increases.⁵¹ Because of coal's propensity to heat spontaneously, ignition sources are almost impossible to eliminate in coal storage and handling.⁵²

Where oxidizing coal accumulates and when there is a sufficient supply of oxygen, coal can spontaneously combust. As explained by the authors of the "Operation Spontaneous Combustion Management Plan" for Newcastle Coal, an Australian export terminal, the ignition of accumulated coal can occur in and around the rail infrastructure corridor and train unloading station, conveyors and transfer points, stockpile and ship loading facility.⁵³

Spontaneous combustion of coal is a well-known phenomenon, especially with Powder River Basin coal. Like some of the coal mined in Utah, this is highly volatile sub-bituminous coal.⁵⁴ Such coal will not only smolder and catch fire while in storage piles at power plants and coal terminals, but also has been known to be delivered to a power plant with the rail car or barge partially on fire.⁵⁵

Many of the studies on spontaneous combustion involve coal from the Powder River Basin. However, Utah coal is also spontaneously combustible. One documented occurrence was at the U.S. Department of Energy's Piñon Pine demonstration project located in the Reno, Nevada. The goals of the Piñon Pine project were to utilize advanced technologies to produce clean, low-cost power from coal and to establish their commercial feasibility beyond the proof-of-concept stage. Unfortunately, the project was aborted in 2001 because of design and equipment flaws. However, for the purposes of these comments, it is instructive that the coal this project used was from the SUFCO mine in Utah. The coal was stored in a dome with a capacity of

⁵⁰ S. Deepak Kumar, *Prevention and Control Module for Spontaneous Combustion of Coal at Coal Yards*, energybiz (Nov. 8, 2011); available at <http://www.energybiz.com/article/11/11/prevention-and-control-module-spontaneous-combustion-coal-coal-yards/>.

⁵¹ *Id.*

⁵² William Atkinson, *Combustible Coal Dust: An Explosion Waiting to Happen*, Public Power (June 2009); available at <http://www.publicpower.org/Media/magazine/ArticleDetail.cfm?ItemNumber=24695>.

⁵³ Phil Reid, Newcastle Coal Infrastructure Group, *Operation Spontaneous Combustion Management Procedure*; available at http://www.ncig.com.au/Portals/2/files/Environment/HSEC_08.09%20Operation%20Spontaneous%20Combustion%20Management%20Procedure.pdf.

⁵⁴ Utah Mining Association, *Types of Coal* available at <http://www.utahmining.org/coaltypes2.html> (accessed Sept. 18, 2015).

⁵⁵ Eric de Place, *Coal's Spontaneous Combustion Problem; Coal Fires Are a Given, But What Are the Risks?*, available at <http://daily.sightline.org/2012/04/11/coal-spontaneous-combustion-problem/>.

16,400 tons, approximately a 20-day supply. Because of the low consumption of the coal due to startup problems, the coal spontaneously combusted. The DOE's solution was to store the coal outside.⁵⁶

The Piñon Pine experience demonstrates the fallacy of TLS's current claim that it will prevent any fugitive coal dust by stockpiling coal in covered domes. As the DOE found, indoor stockpiling of coal increases the risk of fires. If TLS reaches a similar conclusion, the City will be unable to enforce TLS's promises of a covered facility.

Other mitigating measures create their own problems. Water can be constantly sprayed on coal piles to prevent spontaneous combustion but then toxins are leached into the soil and water drainage.⁵⁷ Extensive use of water is, of course, also problematic during the current drought.

TLS may claim that it will have mitigation strategies in place. If TLS does produce such plans, there may be no way to evaluate their effectiveness at this point, when the developer asserts that it needs no further approvals or environmental review. Nor is there an enforcement mechanism to ensure TLS will follow through with what they present outside of an approval process.

D. Coal dust combustion threatens the health and safety of workers and adjacent neighborhoods

Coal dust also is highly combustible and an explosion hazard. According to Francisco Castano, president of Geometrica Inc., a manufacturer of domes for storing coal, if a coal dust cloud is generated inside an enclosed space, and an ignition source is present, an explosion can ensue.⁵⁸

According to the U.S. Occupational Safety and Health Administration, there are five elements required for a dust explosion. The first three complete the fire triangle: combustible dust (fuel), an ignition source (heat) and oxygen in the air (oxidizer). The two additional elements needed for a combustible dust explosion are dispersion of dust particles in sufficient quantity and concentration, and confinement of the dust cloud.⁵⁹ The addition of these latter two elements to the fire triangle creates what is known as the explosion pentagon. If a dust cloud (diffused fuel) is ignited within a confined or semi-confined vessel, area or building, it burns very

⁵⁶ U.S. Dept. of Energy, Piñon Pine IGCC Power Project: A DOE Assessment (Dec. 2000) 12, 16; *available at* <https://www.netl.doe.gov/File%20Library/Research/Coal/major%20demonstrations/cctdp/Round4/PinonPineR2.pdf>.

⁵⁷ Nick Gier, *Coal Problem: Coal Trains Threaten Our Health and Our Environment*, Idaho State U., Dec. 2, 2012; *available at* 2012 WLNR 25595680.

⁵⁸ Atkinson, *Combustible Coal Dust: An Explosion Waiting to Happen*, *supra*.

⁵⁹ *Id.*

rapidly and may explode. The safety of employees is threatened by the ensuing fires, additional explosions, flying debris and collapsing building components.⁶⁰

The dust is notoriously difficult to control.⁶¹ In structures where large amounts of dust are allowed to settle in various places, impacts or vibrations could dislodge the dust, creating a combustible atmosphere.⁶² Dust clouds may generate wherever loose coal dust accumulates, such as on structural ledges of domes if there is a nearby impact or vibration due to wind, earthquake, or even maintenance operations can create a combustible atmosphere.⁶³ Dust can be generated at the terminal site, if bulldozers shift and rotate the coal to lessen the risk of fire.⁶⁴ Constant turnover may be required to both keep the coal in one area and prevent spontaneous combustion.⁶⁵ Any enclosed area where loose dust accumulates is at great risk. Further, even a small conflagration can result in a catastrophic “secondary” explosion if the small event releases a much larger dust cloud.⁶⁶

To prevent coal dust from spewing all over the West Oakland neighborhood, CCIG wants to build a covered coal terminal. But as explained above, covered terminals are susceptible to explosions and pose their own health and safety risks for workers in these terminals and to West Oakland residents.

Mitigation efforts do not make covered coal terminals any safer and bring with them other problems. To prevent fires, TLS must find ways to limit the amount of accumulated dust. This could involve frequent wash-downs, which cannot be safely done around electrical equipment, due to risk of ignition.⁶⁷

The World Health Organization (WHO) cites coal dust, along with silica and asbestos, as responsible for most occupational lung diseases due to airborne particulates.⁶⁸ Coal transport, warehousing, and loading operations will increase worker exposure to coal dust due to inherent jostling of the commodity. Covering and confining the coal export terminal and its operations will only exacerbate these prob-

⁶⁰ *Id.*

⁶¹ Erik Olson, *Westside provides glimpse of Longview’s potential future with coal*, The Daily News (Feb. 12, 2011); available at http://tdn.com/news/local/article_35ad9c0c-3634-11e0-8eea-001cc4c03286.html/.

⁶² Atkinson, *Combustible Coal Dust: An Explosion Waiting to Happen*, *supra*.

⁶³ *Id.*

⁶⁴ Coal Train Facts; available at <http://www.coaltrainfacts.org/key-facts>.

⁶⁵ *Id.*

⁶⁶ Atkinson, *Combustible Coal Dust: An Explosion Waiting to Happen*, *supra*.

⁶⁷ Atkinson, *Combustible Coal Dust*, *supra*.

⁶⁸ Tim Driscoll et al, *Occupational airborne particulates: Assessing the environmental burden of disease at national and local levels*, Environmental Burden of Disease Series, No. 7, World Health Organization, Protection of the Human Environment, Geneva 2004; available at http://www.who.int/quantifying_ehimpacts/publications/en/ebd7.pdf.

lems because dust will be more concentrated within the workspace. And as stated above, covered coal operations raise significant safety concerns for workers related to the increased likelihood of coal combustion when it is confined.

E. Coal dust and leachates pollute waterways, often with long-lasting impacts

Coal and coal dust can contaminate water. As explained above, coal leachates can enter the soil and water during the frequent spraying of water on coal piles to prevent spontaneous combustion.

Leachates from coal are harmful to the environment when they are absorbed into the soil or a nearby body of water. Coal leachates have high concentrations of sulfate, iron, and aluminum, and have an acidic pH.⁶⁹

Ship accidents are another way coal can contaminate water. For example, in 2012 a coal ship crashed into the dock at the Westshore Terminal in Vancouver and spilled coal into the water.⁷⁰ “Very fine material, if it stays suspended especially, could impact filter feeders and small invertebrates. Things like oysters and clams – it could get into their system and it’s not soluble, so it would just stay in there clogging their insides”⁷¹ “larger chunks of coal have the potential to smother benthic organisms—bottom-feeding fish and other marine plants and animals.”⁷²

Even one coal-related accident, such as a spill or leakage, can have repercussions for over a century. Studies on a coal ship that sank in 1891 near British Columbia found in 2012 that the coal is still a source of polycyclic aromatic hydrocarbons (PAHs) and other pollutants in the surrounding water.⁷³

It is unlikely that train cars and storage facilities will be completely water-tight, which would be necessary to prevent leaching into the Estuary.

⁶⁹ G.S. Ghuman et al, *Biogeochemistry of Trace Elements in Coal and Coal Combustion Byproducts, Impact of Coal Pile Leachate and Fly Ash on Soil and Groundwater* (1999); available at http://link.springer.com/chapter/10.1007/978-1-4615-4155-4_14#page-1

⁷⁰ Gordon Hamilton, Tiffany Crawford, *Ship crashes into dock at Westshore Terminals, spilling coal into water*, Vancouver Sun (Dec. 9, 2012); available at <http://www.vancouversun.com/news/Ship+crashes+into+dock+Westshore+Terminals+spilling+coal+into+water+with+video/7667184/story.html#ixzz3lf5EMdGH>

⁷¹ *Id.*

⁷² *Id.*

⁷³ Mark B. Yunker et al., *Source apportionment of elevated PAH concentrations in sediments near deep marine outfalls in Esquimalt and Victoria, BC, Canada: Is coal from an 1891 shipwreck the source?*, *Journal of Organic Geochemistry* (2012); available at <http://cat.inist.fr/?aModele=afficheN&cpsidt=25821441>

III. Coal exports will drive climate change resulting in substantial danger to the health and safety of Oakland residents

A. Coal exports from Oakland will result in substantial contribution to climate change

As science has made increasingly clear, time is running out on our ability to make new commitments to fossil-fuel infrastructure and still indulge the illusion that we can leave a world to our children and grandchildren similar to the one in which we grew up. The public policy issue confronting elected leaders is not merely our behavior in consuming fuels in the future, but the commitments we are making today to burn those fuels.

In August 2014, Steve Davis of the University of California and Robert Socolow of Princeton University published a groundbreaking paper in *Environmental Research Letters* entitled “Commitment accounting of CO₂ emissions.” In their paper, Davis and Socolow presented a profound new way to envision what is at stake when decisions are made about making new commitments to fossil-fuel infrastructure. When commitments are made in the present that will last for decades into the future, we must account for them now. As author Stephen Leahy explains, “A new coal plant will emit CO₂ emissions throughout its 40- to 60-year lifespan. That’s called a carbon commitment.”⁷⁴

Based on Davis and Socolow’s analysis, Leahy has added up the sum of our current carbon commitments and the pace at which we are adding to them and comes to a startling conclusion:

In only three years there will be enough fossil fuel-burning stuff—cars, homes, factories, power plants, etc.—built to blow through our carbon budget for a 2 degrees Celsius temperature rise. Never mind staying below a safer, saner 1.5°C of global warming. The relentless laws of physics have given us a hard, non-negotiable deadline, making G7 statements about a fossil fuel-phase out by 2100 or a weak deal at the UN climate talks in Paris irrelevant.⁷⁵

Building an export terminal designed to send up to 10 million tons per year of coal to Asian export markets for the next 66 years is a massive carbon commitment. Indeed, the magnitude of this carbon commitment is staggering. As a matter of sim-

⁷⁴ Stephen Leahy, *A Hard Deadline: We Must Stop Building New Carbon Infrastructure by 2018*, The Leap (July 2, 2015) at <http://theleap.thischangeseverything.org/author/stephen-leahy/>.

⁷⁵ Leahy, *supra*; see also Bobby Magil, *Coal Plants Lock in 300 Billion Tons of CO₂ Emissions*, Climate Central (Aug. 28, 2014); available at <http://www.climatecentral.org/news/coal-plants-lock-in-300-billion-tons-of-co2-emissions-17950>.

ple arithmetic, dedication of OBOT facility to coal exports could result in the burning of two-thirds of a billion tons of coal during the 66-year term of the developer's lease—a quantity of coal sufficient to produce over 1.5 billion tons of CO₂.⁷⁶

The City Council is now considering the health and safety impacts of facilitating the release of over a billion tons of CO₂ into the atmosphere. We are not talking about a *de minimis* addition of carbon to the atmosphere, but a substantial amount. The incremental amounts of atmospheric carbon that will drive climate change are measured in billions of tons. *A billion tons matters*. For example, in one of the most famous *Rolling Stone* articles of all time, climate activist Bill McKibben explained that we have a “budget” of 565 billion tons of carbon dioxide that we can release into the atmosphere and still have a reasonable chance of staying within a 2°C limit on global warming.⁷⁷ Although scientists now suspect a 1.5°C limit may be needed, a 2°C limit gives us some chance of avoiding catastrophic climate change, ocean acidification, sea level rise, and biodiversity loss.

Two important facts about that budget: (1) the budget must be shared by the entire human race and (2) the budget is over the next few centuries because, once CO₂ levels in the atmosphere rise, they take millennia to recede and the climate impacts are “baked in.”⁷⁸ Thus, a commitment by the City of Oakland to build a coal export terminal could result in the consumption of over one-tenth of one percent of humanity's entire remaining budget of fossil fuel emissions. That may sound small, but all it takes is 1,000 similar commitments and our species can say goodbye to any hope of passing on to succeeding generations a climate similar to the one in which our civilization has operated. We Oaklanders are not one out of a thousand but only one out of every 17,500 people alive today. There are 7 billion people on Earth, only 400,000 of whom are lucky enough to live in Oakland. This, of course, raises a question of equity. This one project will use up 17½ times our fair share of the global carbon budget.

But there is another factor to consider. We must evaluate the dangers of coal exports in the context of what the world's premier climate scientist, James Hansen,

⁷⁶ The addition of two oxygen atoms to coal's carbon atoms when coal burns results in more than two tons of CO₂ emissions from each ton of coal burnt. B.D. Hong & E.R. Slatik, Energy Information Administration, *Quarterly Coal Report, January-April 1994*, DOE/EIA-0121(94/Q1) (Washington, DC, Aug. 1994), available at http://www.eia.gov/coal/production/quarterly/co2_article/co2.html.

⁷⁷ Bill McKibben, *Global Warming's Terrifying New Math*, *Rolling Stone* (July 9, 2012); available at <http://www.rollingstone.com/politics/news/global-warmings-terrifying-new-math-20120719>. Scientists have validated McKibben's general approach while debating the limit. See Fred Pearce, *What Is the Carbon Limit? That Depends Who You Ask*, *Yale Environment* 360 (Nov. 6, 2014); available at <http://e360.yale.edu/feature/what-is-the-carbon-limit-that-depends-who-you-ask/2825/>.

⁷⁸ U.S. Env't Prot. Agency, *Future Climate Change*, available at <http://www3.epa.gov/climatechange/science/future.html> (accessed Sept. 18, 2015).

has referred to as a “planetary emergency.”⁷⁹ The point of irreversible climate change is usually thought of as a 2°C (3.6°F) increase in global average temperature, which has been described as equivalent at the planetary level to the “cutting down of the last palm tree” on Easter Island.⁸⁰ An increase of 2°C in global average temperature coincides roughly with *cumulative* carbon emissions of around one trillion metric tons. Based on past emissions trends it is predicted by climate scientists at Oxford University that we will hit the one trillion metric ton mark in 2043, or thirty-one years from now. We could avoid emitting the trillionth metric ton if we were to reduce our carbon emissions beginning immediately by an annual rate of 2.4 percent a year.⁸¹

But, despite the commitment of governments throughout the world in 2009 to a 2°C limit on global warming, our global carbon emissions have been increasing not decreasing at the requisite 2.4 percent per year. Under such circumstances, every claim of a vested right to build new fossil-fuel infrastructure without rigorous environmental review must be viewed with extreme skepticism. The evolution of our scientific understanding of the severity of climate impacts has outpaced the evolution of our legal system’s ability to protect us from unprecedented threats to our health, safety, and well-being.

The objection has been raised that, because the effects of greenhouse gas emissions are global, the local impact is not enough to require local action. But when we are talking (almost literally) about a plan to pour additional fuel on a raging fire, the need to respond to the planetary emergency requires a change in perspective. If the police power cannot protect us from such foolishness—if we cannot think globally

⁷⁹ Mariano Andrade, phys.org (Sept. 20, 2012), *Planetary emergency due to Arctic melt, experts warn*, at <http://phys.org/news/2012-09-planetary-emergency-due-arctic-experts.html>.

⁸⁰ See John Bellamy Foster, *Occupy Denialism: Toward Ecological and Social Revolution*, MRZine (Nov. 11, 2011); available at <http://mrzine.monthlyreview.org/2011/foster111111.html>.

⁸¹ Allen Myles et al., “The Exit Strategy,” *Nature Reports Climate Change*, April 30, 2009, 56–58, and “Warming Caused by Cumulative Carbon Emissions Towards the Trillionth Tonne,” *Nature* 458 (April 20, 2009): 1163–66; Malte Meinshausen et al., “Greenhouse-Gas Emission Targets for Limiting Global Warming to 2°C,” *Nature* 458 (April 30, 2009) 1158–62; available at <https://www1.ethz.ch/iac/people/knuttir/papers/meinshausen09nat.pdf>; TrillionthTonne.org; Catherine Brahic, Humanity’s Carbon Budget Set at One Trillion Tons, *New Scientist* (Apr. 29, 2009); available at <http://www.newscientist.com/article/dn17051-humanitys-carbon-budget-set-at-one-trillion-tonnes.html>; Katherine Richardson, Will Steffen, and Diana Liberman, *Climate Change: Global Risks, Challenges, and Decisions* (Cambridge: Cambridge University Press, 2011), 212. An increase in global average temperature of 2°C is equivalent to a carbon dioxide concentration in the atmosphere of 450 parts per million (ppm). This would be too much for long-term stabilization of the climate, which requires no more than 350 ppm. However, keeping below the trillionth metric ton in emission is regarded as a prior constraint, since it constitutes a point of no return in terms of the possibility for effective human action with regard to these processes. If carbon emissions could be stopped below a trillion metric tons, it would be possible to get back down over time to 350 ppm. See <http://trillionthtonne.org/questions.html#5>.

and act locally along with many others around the world—then our narrow definition of what is dangerous to our health and safety will become a suicide pact.

B. Climate change will result in substantial danger to the health and safety of Oakland Global’s neighbors

There are many ways that climate change—exacerbated by the proposed coal exports—will impact the residents of Oakland and, in particular, Oakland Global’s neighbors in West Oakland.

In 2002, the Oakland City Council formally recognized the danger that global warming could cause the sea levels to rise, putting the City’s groundwater aquifers at risk of saltwater contamination and threatening to flood the airport and sewer systems.⁸² The link between fossil fuel consumption and rising sea levels is well-established. One study indicated that Oakland’s flatlands could be flooded with as much as nineteen inches of sea level rise by 2050.⁸³ Oakland’s sewer and drainage systems have already had problems with overflow during past storm surges.⁸⁴ A study of the impact of sea level rise on airports across the country indicated serious consequences for Oakland, which will have the second-most severe effects of U.S. airports, after the most at-risk airport in San Francisco.⁸⁵ Rising sea levels will also result in increased risks of earthquakes and tsunamis.⁸⁶

The impact of extreme heat was documented in a 2012 risk assessment which found that Oakland area was the most vulnerable place in the Bay Area to extreme heat. Extreme heat is associated with pre-term births, deaths from heart conditions, and heat stress.⁸⁷ African Americans were noted as especially vulnerable to climate health impacts. Lower income populations often have less access to resources that can offset heat and its related illnesses, including being able to afford air condition-

⁸² Katherine Q. Seelye, *2 Western Cities Join Suit to Fight Global Warming*, New York Times (Dec. 24, 2002), at <http://www.nytimes.com/2002/12/24/politics/24ENVI.html>.

⁸³ Barbara Grady, *When the sea levels rise in the Bay, where will it hurt in Oakland?* OaklandLocal (Jun. 12, 2014); available at <http://oaklandlocal.com/2014/06/when-the-sea-levels-rise-in-the-bay-where-it-will-hurt-in-oakland/>.

⁸⁴ Barbara Grady, *Sea Level Rise Threatens Oakland’s Sewer System*, Climate Central (June 17, 2014); available at <http://www.climatecentral.org/news/sea-level-rise-oakland-sewer-17567>.

⁸⁵ Andrew Freedman, *U.S. Airports Face Increasing Threat From Rising Seas*, Climate Central, June 18, 2013; available at <http://www.climatecentral.org/news/coastal-us-airports-face-increasing-threat-from-sea-level-rise-16126>.

⁸⁶ James Temple, *Projecting warming’s impact on Bay Area*, SFGate (Jan. 5, 2013); available at <http://www.sfgate.com/science/article/Projecting-warming-s-impact-on-Bay-Area-4170481.php>.

⁸⁷ Climate Change Impacts, Vulnerabilities, and Adaptation in the San Francisco Bay Area: A Synthesis of PIER Program Reports and Other Relevant Research, A White Paper from the California Energy Commission’s California Climate Change Center (July 2012); available at <http://www.energy.ca.gov/2012publications/CEC-500-2012-071/CEC-500-2012-071.pdf>.

ing and electric costs. They often lack the medical coverage to receive prompt treatment for a heat-related medical condition.⁸⁸

Climate change also aggravates other health conditions. The health dangers of local pollution from coal dust are sometimes viewed as completely separate from the health dangers of global warming. But in fact these threats overlap. Higher temperature *by itself* contributes to local air pollution and health problems, even if coal can be transported and unloaded absolutely cleanly. As biologist Sandra Steinberg has explained,

the problems of toxicity [from air pollution] and temperature are not independent of each other. Higher global temperatures accelerate the creation of toxic lung pollutants, such as ozone, nitrogen dioxide, particles and carcinogens. And they accelerate the evaporation of liquid pollutants, like gasoline. By raising the heat, you raise the air's toxicity. Higher temperatures also increase levels of pollen, dust mites, and fungal spores. In all these ways, climate change is an asthma trigger.⁸⁹

Climate change also increases fire risk. Scientists have now determined that California's ongoing drought is the worst drought in 500 years and climate change appears to be a significant factor in its causation. The recent horrific fires in Lake, Napa, Sonoma, and Butte counties are the predicted consequences of fossil fuel-induced climate change. Although we have been spared a major urban fire in Oakland for over two decades, the Oakland hills taught us that the unthinkable sometimes happens. The Oakland Hills fire of 1991 alone produced \$1.5 billion in damages, killed 25, and demolished 3,810 apartment units and homes.⁹⁰

C. Oakland cannot escape responsibility for the contribution of its coal exports to climate change, ocean acidification, and human ill health with unsubstantiated arguments that the coal will pass through other ports or will simply be replaced with some other coal

It has been argued that if the coal is not shipped through Oakland to be burned overseas, it will be shipped through another port. However, activists

⁸⁸ *Id.*

⁸⁹ Sandra Steinberg, *Raising Elijah*, Boston, Da Capo Press (2011), at 160; *see also id.* at 159 ("In a 2008 study, Stanford Engineer Marc Jacobson demonstrated that upticks in the average temperature of the planet lead to significant increases in human deaths due to air pollution.... Global climate change is, thus, already contributing to the burden of child asthma...."), citing M.Z. Jacobson, *On the Causal Link Between Carbon Dioxide and Air Pollution Mortality*, *Geophysical Research Letters*, 35 (2008); available at <https://web.stanford.edu/group/efmh/jacobson/Articles/V/2007GL031101.pdf>

⁹⁰ *Id.* at 23.

along the West Coast have been opposing coal exports, with notable success in the Northwest.⁹¹ By stopping coal export wherever it is proposed, the potential use of U.S. coal overseas may be averted entirely.

It has also been argued that people overseas require coal and will be using coal in any case, whether or not they have access to U.S. coal. US coal exports would not supplant the burning of dirtier Chinese coal. Instead, North American exports would add to the volume burned in Asia. As resource economist Thomas Michael Power has explained, increased supply lowers the cost of a commodity, making it more economical to increase consumption.⁹²

This result—that international competition to serve particular import markets will lower the prices that the importing countries have to pay—should not be startling. One of the major benefits of international trade is that it allows countries access to lower cost sources of supply.

In other words, U.S. coal exports will not simply displace other coal in the market. Instead, U.S. coal exports will adhere to fundamental economic principles: an increase in supply will bring down market prices and thereby increase total consumption. The extent to which increasing supply will boost demand is debatable—just like the extent to which higher prices would dampen demand—but the direction of the change is clear.

In fact, some underlying dynamics may make U.S. exports even more critical. As Power points out, lower prices may encourage China to build more coal-burning power plants than they otherwise would, an investment that would lock in elevated coal burning and pollution for decades to come.

⁹¹ Eric de Place, *Coal Export: A History of Failure at Western Ports*, Sightline Institute (Aug. 2012); available at <http://www.sightline.org/research/coal-export/>; Katherine Bagley, *Losing Streak Continues for U.S. Coal Export Terminals*, Inside Climate News (Jan. 12, 2015); available at <http://insideclimatenews.org/news/20150112/losing-streak-continues-us-coal-export-terminals>; Rhiannon Williams, *Port of Long Beach Receives Backlash from Environmental Groups*, CSU-Long Beach Daily 49er (Apr. 30, 2015); available at <http://www.daily49er.com/news/2015/04/30/port-of-long-beach-receives-backlash-from-environmental-groups/>.

⁹² Thomas M. Power & Donovan S. Power, *The Impact of Powder River Basin Coal Exports on Greenhouse Gas Emissions*, Power Consulting Inc. (2013), available at http://www.powereconconsulting.com/WP/assets/GHG-Impact-PRB-Coal-Export-Power-Consulting-May-2013_Final.pdf; Thomas M Power, *The Greenhouse Gas Impact of Exporting Coal from the West Coast: An Economic Analysis*, Sightline Institute (2011); available at <http://powerpastcoal.org/wp-content/uploads/2011/09/Coal-Power-White-Paper.pdf>

IV. The City Council Has Authority to Protect the Health and Safety of Oakland Residents Who Will Be Affected by Coal Exports

A. Section 3.4.2 of the Development Agreement carves out an exception to the rule that after-enacted zoning laws cannot be applied to projects that are already underway

Despite rumored threats by the developer to sue the City of Oakland if the City Council adopts the proposed ban on coal exports, the legal grounds upon which the City Council prohibit coal exports are clearly set forth in the Development Agreement dated July 16, 2013 between the City of Oakland and the developer. Section 3.4.2 of the Development Agreement provides as follows:

Notwithstanding any other provision of this Agreement to the contrary, City shall have the right to apply City Regulations adopted by City after the Adoption Date, if such application (a) is otherwise permissible pursuant to Laws (other than the Development Agreement Legislation), and (b) City 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 or safety.

In California, a development agreement is a statutorily authorized agreement between a municipal government and a property owner for the development of the property.⁹³ One of the main components of a development agreement is a provision freezing the municipality's rules, regulations, and policies governing permitted uses of land and density of the land use, as well as standards and specifications for design, improvement, and construction.⁹⁴ This provision allows a developer to make long-term plans for development without risking future changes in the municipality's land use rules, regulations, and policies.⁹⁵

Because Oakland is a charter city, the Government Code provisions relating to development agreements do not apply directly to the City of Oakland.⁹⁶ However, Oakland has adopted its own ordinances, paralleling the state

⁹³ Gov. Code, § 65865, subd. (a).

⁹⁴ Gov. Code, § 65866.

⁹⁵ *Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors* (2000) 84 Cal.App.4th 221, 227 (*SMART*).

⁹⁶ Under Government Code section 65803, except as otherwise provided, the provisions of Government Code title 7, div. 1, ch. 4 (i.e., Government Code § 65800 et seq.) do not apply to a charter city, except to the extent that the same may be adopted by charter or ordinance of the city.

statutes, authorizing the City (1) to enter into development agreements with any person having a legal or equitable interest in real property⁹⁷ and (2) to establish the authority and procedure for review and approval of proposed development agreements by the City.⁹⁸ The LDDA, a complex lease agreement between the City as land owner and the developer, established the developer's interest in the real property at the former Oakland Army Base but it did not confer any protection on the developer against changes in the law that might occur in laws regulating the use of the property.

The DA, an agreement between the City acting as a municipality and the developer, was adopted seven months after the LDDA with four purposes: (1) to vest the land use policies in effect as of the July 2013 date of adoption; (2) to vest the developer's rights and the City's obligations regarding current and future approvals necessary for the Project; (3) to allocate responsibility for the cost and implementation of the mitigation monitoring and reporting program; and (4) and to memorialize certain "other agreements" between the City of Oakland and the developer with respect to the project.⁹⁹

The exception to the developer's vested rights contained in section 3.4.2 was one of those "other agreements."

Section 3.4.2 embodies the Reserved Powers Doctrine, a well-established legal principle that limits the extent to which sovereign governments can contract away their powers to protect public health and safety. As United States Supreme Court framed the rule 135 years ago, "the legislature cannot bargain away the police power of a State."¹⁰⁰ Thus, a current legislative body cannot use its contract power to bind future legislatures and limit their discretion in exercising the police power.¹⁰¹ If a development agreement bargains away the police power, it is void *ab initio*.¹⁰² Accordingly, section 3.4.2 is, in some sense, merely a recognition of the principle that some subsequent regulations may apply, even to a developer whose project has already been approved and granted a development agreement, where public health and safety are at stake.

⁹⁷ See Muni. Code § 17.102.310

⁹⁸ See Muni. Code ch. 17.138.

⁹⁹ See DA, Recital C, at 2

¹⁰⁰ *Stone v. Mississippi*, 101 U.S. 814, 817 (1880)

¹⁰¹ See David A. Callies, *Development Agreements*, in *Zoning and Land Use Controls* ch. 9a, at 7, 10 (2000).

¹⁰² See *United States Trust Co. v. New Jersey*, 431 U.S. 1, 23 (1977).

B. Provided the City complies with the requirements of section 3.4.2, the developer’s threatened suit against the City would have little chance of success

If the City Council exercises its authority under section 3.4.2, a legal attack will have to argue that the City Council abused its discretion in enacting the ordinance prohibiting bulk export of coal from Oakland’s new marine terminal. A reviewing court will not ordinarily set aside a legislative act unless it is arbitrary, capricious, or unlawful. The Development Agreement limits the right of the City to apply the ordinance to the developer only if the “City 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 [or] adjacent neighbors ... in a condition substantially dangerous to their health and safety.”¹⁰³

Thus, should the developer sue, it would confront the high hurdle of showing that the City had insufficient evidence to support the adoption of the ordinance banning coal export. Review under the substantial evidence rule is extremely deferential and asks not whether City evaluated the weight of the evidence correctly, but only whether there was enough evidence to support the decision, disregarding the other information. The most common application of substantial evidence rule is where an appellate court reviews the factual determinations made by a trial court. Judicial decisions from the appellate courts make clear that judges are not reevaluating the evidence from scratch. “When the trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination.”¹⁰⁴ Substantial evidence is not just any evidence to support the factual finding. The evidence must be reasonable in nature, credible and of solid value.¹⁰⁵ However, the fact that there may be conflicting evidence, and even that most of the evidence supports the challenger, will not support overturning the decision.¹⁰⁶

¹⁰³ D.A., § 3.4.2.

¹⁰⁴ *Bowers v. Bernards*, 150 Cal. App. 3d 870, 872-73 (1984).

¹⁰⁵ *Id.* at 873.

¹⁰⁶ *Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 60 (“we review the entire record in the light most favorable to the judgment to determine whether there are sufficient facts, contradicted or uncontradicted, to support the judgment.”); *see also Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633 (in evaluating the evidence, courts accept reasonable inferences in support of the judgment and do not consider whether contrary inferences may be made from the evidence).

C. A ban on coal exports from Oakland’s own property will not violate the Dormant Commerce Clause

In the City Administrator’s Notice of Public Hearing on the Health and/or Safety Impacts of Coal dated August 28, 2015, the City invited the public to submit information, testimony and other evidence regarding the Dormant Commerce Clause. Presumably, this request arose out of concern that regulation of trans-shipment of coal through Oakland would violate the Commerce Clause of the United States Constitution by discriminating against or interfering with interstate or foreign commerce.

This topic was covered thoroughly in a recent law review article that discusses at length the Dormant Commerce Clause in relation to local regulation of coal export terminals.¹⁰⁷

In this article, the authors explain that, under the Dormant Commerce Clause doctrine, state and local regulations violate the Commerce Clause (1) if they discriminate against interstate commerce on their face or (2) if they place an undue burden on interstate commerce. On its face, an Oakland ordinance prohibiting coal exports from City-owned land would not discriminate between California and out-of-state coal producers, even if there are no California producers. Moreover, the first prong is not met merely by discrimination against a product that comes exclusively from out-of-state suppliers if the disparate treatment “results from natural conditions.”¹⁰⁸ Thus, “treating coal differently because of its unique impacts on the environment would not offend the dormant Commerce Clause.”¹⁰⁹ The authors concluded that it is unlikely that regulation based on coal’s local impacts would amount to prohibited discrimination against the interstate movement of coal.¹¹⁰

The second prong “undue burden” test is more difficult to meet. Under the applicable balancing test, a nondiscriminatory state or local law will be upheld unless its impacts on interstate commerce are “clearly excessive in relation to the putative local benefits.”¹¹¹ As the authors of the law review article point out, the Ninth Circuit has referred to *Pike*’s balancing test as the “minimal scrutiny test.”¹¹² Unless a facially non-discriminatory law is “unreasonable or irrational,” courts “should not second-guess the empirical judgments of lawmakers concerning the utility of legisla-

¹⁰⁷ See Henry W. McGee et al., *Coal and Commerce: Local Review of the Gateway Pacific Coal Terminal*, 4 Seattle J. Envtl. L., 283 (2014).

¹⁰⁸ See *id.* at 309 & n.133.

¹⁰⁹ *Id.* at 309.

¹¹⁰ *Id.*

¹¹¹ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1960).

¹¹² *Black Star Farms LLC v. Oliver*, 600 F.3d 1225, 1231 (9th Cir. 2010); see McGee, *Coal and Commerce*, at 302.

tion.”¹¹³ A ban on coal exports may not be based on impacts that are merely illusory, but findings based on substantial evidence will suffice, even if there may be substantial contrary evidence. The City Council is, therefore, free to make an empirical judgment and decide what to do to protect the health and safety of Oakland Global’s neighbors and workforce, and the City’s legislative judgment should survive judicial review.

The law review article also discusses enhanced authority for local regulation of land owned by the City as a “market participant.”¹¹⁴ Depending on the particular terms of an ordinance dealing with coal exports, this issue may play an important role in the analysis. In any case, for the reasons set forth in the article, local regulation of coal exports from City-owned property in Oakland will not seriously implicate the Dormant Commerce Clause.

D. The City Council can enact an ordinance banning coal exports by a simple majority vote

Rumors have been circulating that the City Council cannot pass a ban on coal exports by a simple majority vote. These rumors, repeated by some City officials, have never cited any particular provision of the City Charter or Code that requires a super-majority vote.

There are only rare instances where a 4/5ths vote (which in the case of the 8-member City Council would require 7 ayes) is required to pass legislation. Government Code section 65858 requires a 4/5ths vote to “adopt as an urgency measure an interim ordinance” which is effective for only 45 days in order “to protect the public health, safety, and welfare” while a legislative body or planning department is studying a question that may lead to a more permanent enactment.¹¹⁵ The interim ordinance can twice be extended for additional time.¹¹⁶

Nothing in section 3.4.2 of the Development Agreement requires the City to “adopt as an urgency measure an interim ordinance” regulating coal exports while it studies the matter. The requirements of section 3.4.2 are that the City hold a public hearing after which it must make a determination whether substantial evidence has been presented that failure to adopt an ordinance banning coal “would place existing or future occupants or users of the Project [or] adjacent neighbors ... in a condition substantially dangerous to their health and safety.” There is no requirement that the City Council adopt an interim ordinance prior to adoption of a measure

¹¹³ *S.D. Myers v. City and Cnty. of S.F.*, 253 F.3d 461, 471 (9th Cir. 2001) (internal quotations and citations omitted).

¹¹⁴ McGee, *Coal and Commerce*, at 303-304.

¹¹⁵ Govt. Code, § 65858, subd. (a).

¹¹⁶ *Id.*

that would ban coal exports. Moreover, such an interim ordinance would be pointless as OBOT will likely take years to build so the danger of coal exports through OBOT is not immediate.

What is immediate is the interest of all parties in having a swift resolution of the controversy, which an ordinance banning coal exports from the City's land will bring.

V. The developer's claim that the success of the entire project depends on coal exports is without merit

Defenders of the developer's coal export plan argue that, although coal exports have unfortunate environmental consequences, the more important thing is to bring jobs to Oakland, and a ban on coal exports will kill jobs. This argument rests on two premises: (1) that, without coal exports, the entire project will collapse and the Building Trades workers will lose all their expected hours of work and (2) that coal exports will contribute to the success of the project and bring prosperity to Oakland. These arguments are false.

A. OBOT is viable without coal as one of its commodities

When the developer signed the LDDA in 2012 and the Development Agreement in 2013, he had promised a city councilmember and the public in a writing on his website that he would not export coal from OBOT. Thus, when he entered into those agreements, he believed that OBOT would be viable and profitable without coal. Nothing has changed today that would alter his belief except for the \$53 million that the four Utah counties are dangling in front of him.

In examining other ports on the West Coast, it is clear that coal is a small proportion of the commodities they ship. Coal accounts for only 0.15% and 0.8% of the value of all exports out of the entire Los Angeles district and the entire San Francisco district, respectively.¹¹⁷ The ports in the Seattle, Columbia-Snake, and San Diego districts do not export coal at all.¹¹⁸ Like these ports, OBOT can be viable without coal.

There are 15,000 possible commodities that can be shipped from OBOT. Oakland's top 10 containerized export commodities are wood pulp, fruit and nuts, meat, fish, beverages, oil seeds, grains, seeds, cereals, iron and steel, preserved vegetables,

¹¹⁷ West Coast exports; sheet LA 27; cell B3, sheet SF 27; cell B3, USA Trade Online (accessed Aug. 19, 2015); available at <https://usatrade.census.gov/>.

¹¹⁸ West Coast exports; sheet SD27; column A sheet CS 27; column A; cell D7 sheet SEA 27; cells D7 and D1, USA Trade Online (accessed Aug. 19, 2015); available at <https://usatrade.census.gov/>

fruits, and nuts, plastics, food waste.¹¹⁹ OBOT will be able to export a greater volume of some of these dry bulk commodities. And it can export oversized items such as tractors, bulldozers, aircraft and parts, machinery, wood, pipes, pumps, and turbines which as explained below, create far more jobs than coal exports.¹²⁰

B. Coal exports will bring fewer permanent jobs to Oakland

Coal export terminals bring far fewer permanent jobs than terminals that ship other dry bulk goods and oversized commodities. A Port of Seattle economic impact study found that shipping 1,000 metric tons of grain—a bulk commodity like coal—generates just 0.09 jobs, compared with 0.57 jobs for containerized cargo and 4.2 jobs for “break bulk” cargo, such as big machines or goods shipped on pallets, which requires more handling.¹²¹

A study at the Port of Baltimore came to similar conclusions, finding that coal export supports just 0.11 jobs per 1,000 metric tons, as compared to 0.41 for other dry bulk commodities, 0.43 jobs for containerized cargo, and 1.71 jobs for autos.¹²²

Recent redevelopments on port sites along the Lower Columbia River illustrate the weakness of coal exports as an economic strategy. The proposed coal export terminal at Longview would occupy 416 acres of heavy industrial waterfront property and produce 70 jobs—less than 0.2 jobs per acre. By contrast, in Troutdale, Oregon a recently cleaned-up port site attracted a FedEx Ground regional distribution center that employs over 750 people on 700 acres of heavy industrial property—supporting 1.1 jobs per acre.¹²³

In Vancouver, Washington another redeveloped port site with 218 acres of heavy industrial waterfront is expected to employ up to 1,000 people to accommodate a surge in wind turbines and other cargo—generating 3.4 jobs per acre.¹²⁴

Clearly, as an economic and job development strategy, reserving half of OBOT for Utah coal is a bad strategy.

¹¹⁹ Port of Oakland, *Port of Oakland Top 10 Commodities By Tonnage – Exports (Containerized) Calendar Year 2014*, source: U.S. Dept of Commerce, Bureau of Census; available at <http://www.portofoakland.com/maritime/commodities.aspx>; *Port of Oakland, Maritime Operations at a Glance—Principal Exports*; available at <http://www.portofoakland.com/maritime/operations.aspx>.

¹²⁰ *Id.*

¹²¹ Eric de Place, *An Alternative to Coal Jobs; Clean redevelopment provides more employment at Northwest ports*, Sightline Daily (Sept. 14, 2011) <http://daily.sightline.org/2011/09/14/an-alternative-to-coal/>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

C. Building a coal export terminal may be a gateway to instant obsolescence

The idea that coal exports will provide the foundation for a successful project is baseless given the collapse of the domestic coal industry and Asian countries' scaling back on the reliance on coal as an energy source. The proposal to base Oakland Global's future on coal appears to come out of a time warp from several years ago. In 2015, coal faces an uncertain future worldwide.

The U.S. coal industry's recent hot pursuit of overseas markets is the direct result of regulatory and economic pressures that are contracting coal's share of the energy market here in the States. Under new Environmental Protection Agency regulations, U.S. power plants are required to cut emissions by 32 percent from the 2005 levels by 2030. In addition, new power plants are required to be much cleaner, which could effectively bar construction of new coal-fed plants. The rapid expansion of natural gas and renewables are also taking a toll on the U.S. coal market.

Facing a dramatic collapse of domestic demand, the coal industry is desperately seeking overseas outlets.¹²⁵ But the prospects for selling surplus coal overseas are suddenly looking much worse than they did just two years ago as the recent global coal boom turns to global coal bust.

1. *China Is Ratcheting Down Coal Imports*

China is the biggest market for coal in the world. China was a net coal exporter before 2009 but became a huge importer in the next four years.¹²⁶ That is now yesterday's news. In 2014, China's coal use declined for the first time in this century and its imports dropped by 10%.

Although the Chinese government has a reputation for indifference to air pollution, it has begun to take forceful measures to respond to the appalling air pollution in major Chinese cities. Partially as a result of these measures and partially as a result of China's economic slowdown, in the first five months of 2015, China's coal imports fell by 38.2% compared to the same period in 2014—a huge fall in such a short

¹²⁵ Ben Goldfarb, *The Latest: coal companies seek terminals beyond the Northwest*, High Country News (May 21, 2014); available at <https://www.hcn.org/issues/46.9/the-latest-coal-companies-seek-export-terminals-beyond-the-northwest>.

¹²⁶ Annie Gilroy, *China's Coal Imports Go From Bad to Worse*, Market Realist (June 24, 2015) available at <http://marketrealist.com/2015/06/chinas-coal-imports-go-bad-worse>.

time.¹²⁷ A report released this month indicates that China's coal demand has now fallen for eleven straight months.¹²⁸

Wall Street analysts now recognize that China may already have reached its peak use of coal, years before it was expected. A Wall Street Journal article in February cited analysts who said the trend is part of “a worst-case scenario for coal miners the world over, who had hoped Chinese coal imports would save them from collapsing markets in the West.”¹²⁹

The decrease puts China at or near an inflection point known as “peak coal,” a point at which a long-term decline in consumption of the mineral begins after decades of heavy use. The shift already is having major indirect effects, with coal prices worldwide falling to six-year lows, mines closing throughout China, and global mining companies facing insolvency.¹³⁰

The mining industry previously had “predicted a straight line of continued growth in China. Now here we are,” said Lucas Pipes, an analyst at Brean Capital LLC, an investment bank and asset-management firm. “That is a sea change in the global coal market.”¹³¹

“There's no question that a lot of U.S. companies in particular latched their hope to significant gains in China ... almost into perpetuity,” said Mark Levin, an analyst at BB&T Corp.'s capital-markets group. And given transportation costs, the U.S. mining company is “the guy who gets priced out of Asia the fastest.”¹³²

2. *India's Coal Boom Has Also Withered*

With Chinese demand for foreign coal stalling, India has become the latest great hope of the seaborne coal market. However, grassroots citizen opposition, inadequate infrastructure, transport bottlenecks,¹³³ and coal supply issues have caused

¹²⁷ *Id.*

¹²⁸ Zachary D. Boren, *China coal demand falls for twelve straight months*, Energydesk Greenpeace (Sept. 9, 2015); available at <http://energydesk.greenpeace.org/2015/09/09/china-coal-demand-falls-for-eleven-straight-months/>.

¹²⁹ Timothy Puko, Chuin Wei-Yap, *Falling Chinese Consumption and Output Undermine Global Market; Last year's trend is country's first such decline in 14 years, frustrating mining companies*, Wall Street Journal (Feb. 26, 2015); available at <http://www.wsj.com/articles/chinas-coal-consumption-and-output-fell-last-year-1424956878/>.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Puko, *Falling Chinese Consumption*, *supra*.

¹³³ Sunil Saraf, *India Coal: transport bottlenecks as demand is expected to rise*, Platts (May 27, 2015), available at <http://www.platts.com/news-feature/2015/coal/india-coal-transport/index>.

financing for new coal plants to dry up and cast doubt on optimistic assumptions about India's potential to replace China as a major importer of coal.

The Financial Review, a leading Australian business and finance newspaper, reports that, despite anticipated growth in the use of coal in India, India may have little need for foreign coal beyond the next six or seven years. The Financial Review cites a report by Tim Buckley, director of Australasian energy finance at the Institute for Energy Economics and Financial Analysis (IEEFA), saying Prime Minister Modi government's bold renewable energy and coal production goals could eliminate India's need for thermal coal imports beyond 2021.¹³⁴

3. *Coal's Faces Bleak Financial Prospects and Action on Climate Change Could Turn an Oakland Coal Terminal into a "Stranded Asset"*

Recently, the Bank of England, one of the world's key central banks, sounded an alarm concerning the increasingly risky nature of investments in fossil fuel that assume business-as-usual will continue without disruption.¹³⁵ Speaking at an insurance conference, Paul Fisher, deputy head of the regulation authority that supervises England's banks and insurance companies, warned that insurers could suffer a "huge hit" if their investments in fossil fuel companies are rendered worthless by international action on climate change.¹³⁶

"One live risk right now is of insurers investing in assets that could be left 'stranded' by policy changes which limit the use of fossil fuels," said Fisher. "As the world increasingly limits carbon emissions, and moves to alternative energy sources, investments in fossil fuels—a growing financial market in recent decades – may take a huge hit."¹³⁷

The new warning from the Bank of England follows a caution from its head Mark Carney that the "vast majority of [fossil fuel] reserves are unburnable" if climate change is to be limited to 2°C, as pledged by the world's governments.¹³⁸ The bank

¹³⁴ Ben Potter, *India won't need Australian coal after 2020, analyst says*, AFR Weekend (Aug. 10, 2015); available at <http://www.afr.com/business/mining/coal/india-wont-need-australian-coal-after-2020-analyst-says-20150810-givhmm##ixzz3j5NO7ggZ>.

¹³⁵ Damian Carrington, *The Guardian* (March 3, 2015) *Bank of England Warns of Huge Financial Risk from Fossil Fuel Investments*; available at <http://www.theguardian.com/environment/2015/mar/03/bank-of-england-warns-of-financial-risk-from-fossil-fuel-investments/>.

¹³⁶ Paul Fisher, *Confronting the Challenges of Tomorrow's World* (March 3, 2015); available at <http://www.bankofengland.co.uk/publications/Pages/speeches/2015/804.aspx>

¹³⁷ *Id.*

¹³⁸ *Id.*

will deliver a report to the British government on the financial risk posed by a “carbon bubble” later in 2015.¹³⁹

Citibank recently issued a similar warning. In an August 2015 report, Citibank stated, “We estimate that the total value of stranded assets could be over \$100 trillion based on current market prices.”¹⁴⁰ And coal bears the brunt, accounting for more than half the value of stranded assets, even in the unlikely event that carbon capture and storage becomes a viable technology.¹⁴¹

Citibank based its analysis of stranded assets on a study published earlier this year in *Nature*, one of the world’s leading scientific journals.¹⁴² Figure 1, which appears in the Citibank report,¹⁴³ sums up the findings of the analysis published in *Nature*. The green represents the percentage of coal reserves that could be extracted under a 2°C scenario. The graph shows that 80% of proven coal reserves must be left in the ground if carbon capture and storage becomes viable; and 90% if carbon capture and storage turns out to be a pipe dream.

¹³⁹ <http://www.theguardian.com/environment/2014/dec/01/bank-of-england-investigating-risk-of-carbon-bubble>

¹⁴⁰ Jason Chanel et al., *Energy Darwinism II; Why a Low Carbon Future Doesn’t Have to Cost the Earth*, Citi GPS: Global Perspectives and Solutions (Aug. 2015); available at <https://ir.citi.com/hsq32Jl1m4aIzicMqH8sBkPnbsqfnwy4Jgb1J2kIPYWIw5eM8yD3FY9VbGpK%2Bax/>.

¹⁴¹ *Id.* at 84.

¹⁴² Christopher McGlade, Paul Ekins, *The geographical distribution of fossil fuels unused when limiting global warming to 2°C*, *Nature* (2015); available at <http://www.nature.com/nature/journal/v517/n7533/full/nature14016.html>; see also Damian Carrington, *Leave fossil fuels buried to prevent climate change, study urges*, *The Guardian* (Jan. 7, 2015), available at <http://www.theguardian.com/environment/2015/jan/07/much-worlds-fossil-fuel-reserve-must-stay-buried-prevent-climate-change-study-says> (estimating that 90% of United States coal reserves must remain buried).

¹⁴³ Chanel, *Energy Darwinism II*, at 84.

Total and Unburnable Coal Reserves

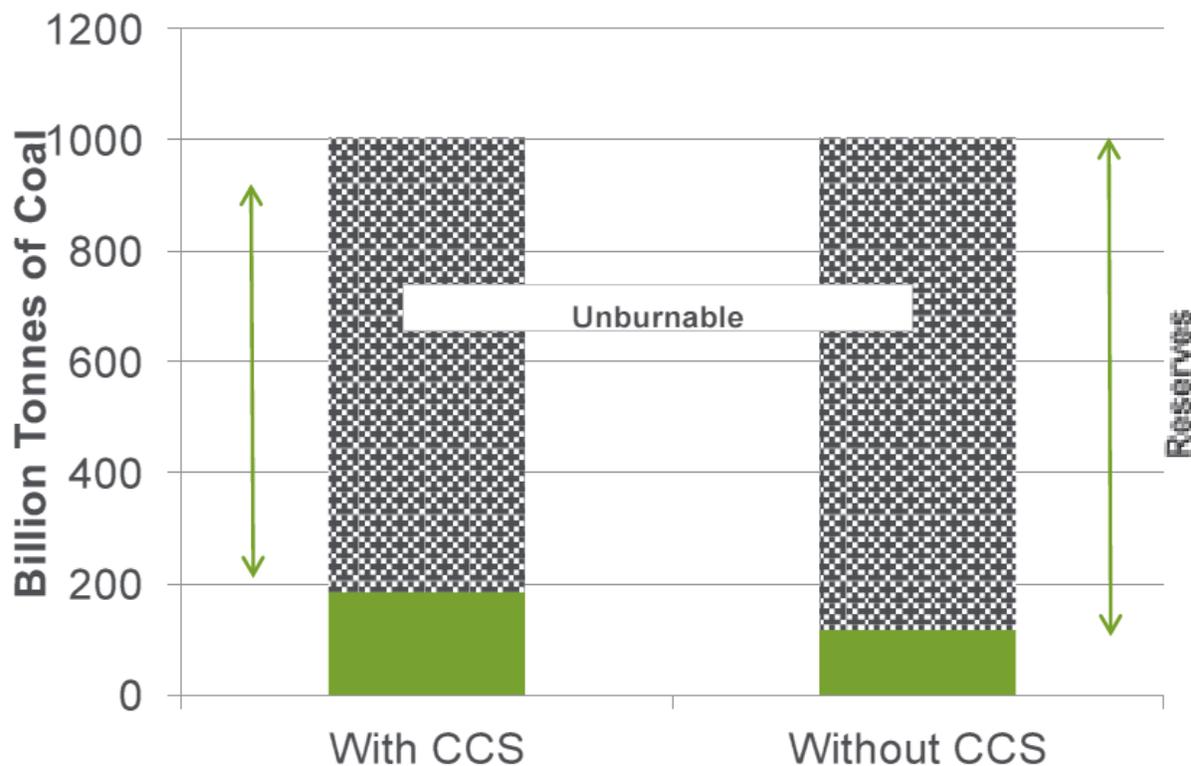


Figure 1. Total and unburnable coal reserves if carbon capture and storage technology becomes viable and if it does not. Source: Citibank.¹⁴⁴ Data Source: McGlade & Ekins, Nature (2015); Citi Research.

Although the warnings are becoming louder and more frequent, the idea that there may be a bubble about to burst has been voiced for several years. Former U.S. Treasury secretary Hank Paulson said in 2014: “When the credit bubble burst in 2008, the damage was devastating. We’re making the same mistake today with climate change. We’re staring down a climate bubble that poses enormous risks to both our environment and economy.”¹⁴⁵ World Bank president Jim Yong Kim said: “Sooner rather than later, financial regulators must address the systemic risk associated with carbon-intensive activities in their economies.”¹⁴⁶

¹⁴⁴ *Id.*

¹⁴⁵ Henry M. Paulson Jr., New York Times (June 21, 2014), *The Coming Climate Crash* at http://www.nytimes.com/2014/06/22/opinion/sunday/lessons-for-climate-change-in-the-2008-recession.html?_r=0

¹⁴⁶ Jim Yong Kim, Remarks at Davos World Economic Forum, Davos, Switzerland (Jan. 23, 2014) at <http://www.worldbank.org/en/news/speech/2014/01/23/world-bank-group-president-jim-yong-kim-remarks-at-davos-press-conference>.

With plummeting opportunities at home and abroad, the coal industry is receiving the cold shoulder from financial analysts, raising the prospect that a coal export terminal in Oakland may turn out to be a giant and costly White Elephant that produces nothing like the projected revenues the City of Oakland is relying on to repay the substantial investment of public funds in redevelopment at the former Oakland Army Base.

Even coal industry insiders are painting a grim picture of the industry's prospects. Bob Murray, CEO of Murray Energy, the largest underground coal mining company in the U.S., raised eyebrows with a September 2014 energy conference speech in which he cited U.S. Chamber of Commerce data that coal might supply only 14 percent of U.S. electricity fuel by 2030.¹⁴⁷

"We have the absolute destruction of the coal industry," said Murray, whose company is privately held. "If you think it's coming back, you don't understand the business ... because it's not going to come back." Murray's company recently picked up Columbian coal mines for pennies on the dollar after Goldman Sachs Group Inc. decided to call it quits.¹⁴⁸

"The coal industry is arguably the poorest-performing sector in today's global economy and is in a state of structural decline," according to Tom Sanzillo, IEEFA's director of finance.¹⁴⁹ "It is a shrinking industry with little upside potential." Sanzino adds that the market is unlikely to rebound, as it may have done in the past, because of tougher environmental laws. He recommends that investors avoid the coal industry. "The high level of risk for both coal-mining and coal-burning companies suggests weak long-term performance and is best avoided altogether."

Of coal companies that have publicly traded debt, Moody's Investors Service and Standard & Poor's rates all their bonds as junk.¹⁵⁰ "If you look at the long term, it's not getting any better," said Standard & Poor's analyst Aneesh Prabhu.¹⁵¹

¹⁴⁷ Tim Puko, Robert Murray: Don't Copy Murray Energy Company's Deal Making, Wall Street Journal (Sept. 22, 2014); available at <http://blogs.wsj.com/moneybeat/2014/09/22/robert-murray-dont-copy-murray-energys-deal-making>.

¹⁴⁸ I.J. Dugan and Tim Puko, *Goldman Sachs Sells Columbian Coal Mines to Murray Energy*, Wall Street Journal (Aug. 13, 2015); available at <http://www.wsj.com/articles/goldman-sachs-sells-colombian-coal-mines-to-murray-energy-1439518460>

¹⁴⁹ Business Green, *Coal Industry Faces Grim Outlook, Analysts Warn* <http://www.businessgreen.com/bg/analysis/2408771/coal-industry-faces-grim-outlook-analysts-warn>

¹⁵⁰ <http://www.cnbc.com/2015/01/12/has-war-on-coal-uneared-the-ultimate-value-stocks.html>

¹⁵¹ Hertsgaard Mark, *Coal, Like Tobacco, Must Go—But It Must Be Phased Out Carefully*, The Nation (May 6, 2015); available at <http://www.thenation.com/article/coal-tobacco-has-go-it-must-be-phased-out-carefully/>.

If, as analysts suggest, the coal industry is a “dead man walking,” what are the implications for Oakland?

Allowing coal exports puts at risk not only to the health and safety of Oakland’s residents, but the long-term viability of Oakland’s waterfront infrastructure investment. The public funding of this development, which may well exceed private investment when all is said and done, is premised on the notion that this development will become an economic engine bringing jobs to Oakland and earning rent that will bring stable revenues to the City for years to come. These goals are poorly served by a 66-year commitment to export Utah coal from our public land.

VI. CONCLUSION

As explained in detail above, coal exports pose a substantial danger to the health and safety of West Oakland residents, the future workers of the proposed coal terminal, and future generations of Oaklanders. There are no measures that will protect these residents from exposure to toxic coal dust. There is no evidence that covered cars or covered terminals would be effective in controlling fugitive coal dust. Coal exports will worsen climate change and lead to substantial danger to the health and safety of Oakland residents. Coal is not necessary for OBOT to be profitable and viable. When the coal market is collapsing in this country and in Asia and the long term prospects for coal are dismal, building a coal export terminal and leasing it for 66 years to Utah coal companies is foolhardy. The City Council has the authority to protect the health and safety of Oakland residents from the dangers of coal transport, storage, shipment, and ultimate combustion. We respectfully ask the Council to adopt without delay an ordinance banning the use of our public land for coal exports.

Sincerely,

No Coal in Oakland

Sunflower Alliance

350 Bay Area

System Change Not Climate Change

West Oakland Neighbors

ATTACHMENT A

Comments of Dr. Bart Ostro. Former Chief of the Air Pollution Epidemiology Section, California Environmental Protection Agency. Dr. Ostro was responsible for helping to develop the air pollution standards for fine particles (PM2.5) for California, the U.S. EPA and the World Health Organization and is the author of over 100 peer reviewed publications on the health effects of air pollution and heat waves.

RE: Comments regarding Exposure and Public Health Impacts of Coal Exports at the Former Oakland Army Base for the Council hearing on Sept 21, 2015

Dear Oakland City Council Members:

EXPOSURES

- Recent studies of 367 trains in Washington State (Jaffe et al., 2014; 2015) reported the average peak in near-by concentrations of fine particles (particles less than 2.5 microns or PM2.5) of coal trains were twice that of freight, specifically 21 versus 11 micrograms per cubic meter (the standard measure of particle concentrations, abbreviated as $\mu\text{g}/\text{m}^3$). For reference, the current U.S. standard for 24-hour average of PM2.5 is $35 \mu\text{g}/\text{m}^3$. In addition, they reported several events with concentrations greater than $75 \mu\text{g}/\text{m}^3$ with concentrations up to $230 \mu\text{g}/\text{m}^3$. Thus, we could expect very high peaks of PM2.5, at concentrations that could cause health effects.
- PM2.5 has been determined by The World Health Organization (WHO) to have the greatest worldwide impacts of any environmental exposure with an estimated 3 million deaths per year. Estimates for California range from 10 to 30 thousand per year.
- In addition to PM2.5, the coal dust will include toxic heavy metals such as arsenic, cadmium, chromium, lead, mercury and nickel.
- It is likely that coal trains, especially mile-long trains coming through a community on a daily basis will significantly impact the noise levels in the community.
- Since the location of the facility is in close proximity to the Bay, it is likely to lead to deposition of toxic metals in to the water which could ultimately enter the food chain.

HEALTH IMPACTS

- Studies from around the world and from California demonstrate important associations between daily exposure to PM2.5 and a wide range of health impacts including respiratory symptoms, school and work loss, asthma exacerbation, emergency room visits, non-fatal heart attacks, adverse birth outcomes, hospital admissions, and death from cardiovascular disease. The populations at greatest particular risk (though other groups are susceptible) include children, asthmatics and older individuals with pre-existing cardiovascular or respiratory disease.
- Studies in California demonstrate that daily exposure to PM2.5 and larger particles can lead to early death, increases in hospitalization and emergency room visits, and adverse birth outcomes (Ostro et al. 2006, 2009; Malig and Ostro (2009), Green et al. (2009), Malig et al. (2013)). In addition, since exposure to coal dust can be considered similar to

that of black carbon, on a per microgram basis the risks of early death and hospitalization might even be larger than that of PM_{2.5} (Ostro et al., 2014).

- While specific ambient standards have been established for PM_{2.5}, institutions including California EPA and WHO, have specified there is no clear cut safe level for these effects. This indicates that every exposure adds to the likelihood of an adverse health outcome.
- Chronic exposure to the toxic metals in coal have been linked to cancer, adverse birth effects, and other severe health outcomes.
- A recent review of the health effects of noise pollution indicates effects on sleep quality and quantity, reduced learning and school performance, impaired social–emotional development, stress and hypertension (Hammer et al., 2014).
- In addition, we need to consider the added health impacts of burning up to 10 million tons of coal on climate change. Over time, climate models predict increases in both the intensity and duration of heat waves in California and an increase in ozone pollution. Again, the health effects of higher temperatures and of ozone in California have been well documented and will result in increases in both mortality, hospitalization and emergency room visits in Oakland.

CONCLUSIONS

- 1. While there is uncertainty about the specific increase in coal dust from trains coming to Oakland, the available literature indicates important increases in fine and larger particles and several toxic metals.**
- 2. The increase in local exposure to PM_{2.5} from coal trains is almost double that of freight trains.**
- 3. Exposure to these pollutants have been linked in dozens of studies, including several conducted in California, with death, hospitalization for cardiovascular and respiratory disease, emergency room visits, cancer, asthma exacerbation and adverse birth outcomes.**
- 4. There is likelihood that the pollutants will also end up in the Bay and in our food chain.**
- 5. There is a possibility of other health effects on those on individuals working on or near the loading and unloading of the coal, from the exposure to noise and from potential derailments and fires.**

References

- Green et al. (2009) *Environmental Health Perspectives* 117: 1939-44.
Hammer et al. (2014) *Environmental Health Perspectives* 122:115–119.
Jaffe et al. (2014) *Atmospheric Pollution Research* 5:344-351.
Malig and Ostro (2009) *Occupational and Environmental Medicine* 66:832-839.
Malig et al. (2013) *American Journal of Epidemiology* 178:58-69.
Ostro et al. (2006) *Environmental Health Perspectives* 114: 29–33.
Ostro et al. (2009) *Environmental Health Perspectives* 117:475-480.
Ostro et al. (2014) *Occupational and Environmental Medicine* 72:123-9.

The opinions expressed here do not necessarily represent those of the California EPA.

ATTACHMENT B

9/14/15

RE: Public Health Impacts of Coal Exports at the Former Oakland Army Base

Dear Oakland City Council Members:

I am a public health epidemiologist with over 25 years of experience in assessing public health impacts of environmental exposures, including hazardous material spills, pesticides, and air pollution. I am an Alameda County resident and hold a doctorate degree in epidemiology from the University of California, Berkeley, School of Public Health which I feel especially qualifies me to comment on the potential health impacts of possible coal exports at the Former Oakland Army Base.

I would like to focus my comments on three areas:

1) Coal dust exposures will add pollution to an already disproportionately burdened community suffering long-standing health risks.

Exposure to coal dust is a public health hazard and exposure to West Oakland residents will be adding pollution to a community with already **some of the highest pollution burden in the State** with long-standing health risks. For example, published work conducted by myself and my colleagues showed that areas of West Oakland had **some of the highest rates of emergency room visits for asthma for children in Alameda County**. An accompanying economic analysis showed that the highest costs in the County to society for treating asthma also incurred in this region. Adding coal dust exposures will add pollution to a minority area already suffering from disproportionate pollution effects and will increase health care costs. Children suffering from asthma would be likely to experience a further loss of lung function from inhaling even low levels of coal dust (especially those particles of coal dust less than 10 microns in diameter). The California Environmental Protection Agency has rated parts of the West Oakland area as some of the highest census tracts in the State burdened by pollution. For example, census tract 4017 in West Oakland is rated at the 78th percentile for overall pollution burden and the top percentile for clean-up sites compared to all other CA census tracts.

2) The potential for fire and/or explosion especially during the terminal processing and storage stages, is real, and the onus should be on the developers/owners to show that proper control measures will be implemented to reduce this risk.

Dust explosions and/or fire can occur when coal dust concentrations are high enough, there is an ignition source, and oxygen is present. The owners/developers must show how the suspended dust will be kept at or below 25% of the lower explosive limit (LEL) at all times. Water misting is one of the main control methods for reducing coal dust explosion/fire potential. At the Westshore terminal near Vancouver, British Columbia, which is the largest existing coal export terminal on the West Coast, water costs are approximately \$1.5 million/year. This does not seem like a good investment to be making during a historic drought crisis.

English comments, page 2

3) Investing in fossil fuel development/transport at this critical time is bad for public health.

At a time when large institutions such as the University of California are divesting funds from fossil fuel holdings, the timing could not be worse for the City of Oakland to invest in coal transport. This obviously goes against the Council's own resolution (7/17/14) opposing the transport of fossil fuels by rail through the city. **Climate Change has been called the biggest global health threat of the 21st century.** It would be unconscionable for Oakland to support this effort, no matter what the financial gain. Health effects such as increased heat illness and death, increased air pollution and respiratory disease, increased wildfires and deteriorated air quality, drought and effects on water quality, are among only a few of the consequences of continued burning of fossil fuels. The City of Oakland would be complicit in contributing to the climate change crisis with the approval of this facility.

Thank you for letting me outline some concerns with the proposed coal export terminal at the former Oakland Army Base. I hope that the City will decide on the right side of history and not allow this health-damaging facility be approved in Oakland.

Sincerely,



Paul B. English, PhD, MPH

References

[Progress in pediatric asthma surveillance II: geospatial patterns of asthma in Alameda County, California.](#) Roberts EM, English PB, Wong M, Wolff C, Valdez S, Van den Eeden SK, Ray GT. Prev Chronic Dis. 2006 Jul;3(3):A92. Epub 2006 Jun 15

California Environmental Protection Agency. CalEnviroscreen 2.0 <http://oehha.ca.gov/ej/ces2.html> Accessed 9/14/15

"What Coal Train Dust means for human health" Oregon Public Broadcasting, 2015. <http://www.opb.org/news/article/coal-dust-a-closer-look/> Accessed 9/14/15

From: [Paul Sanford](#)
To: [Cole, Doug](#); [Kalb, Dan](#); [McElhane, Lynette](#); [At Large](#); [Darwin BondGraham](#); [Julie Small](#); [Michael Kaufman](#)
Cc: [Jonathan Sanford](#); [Paul Sanford](#)
Subject: INEVITABLE DISASTEROUS RISE IN SEA LEVEL IN OAKLAND IS A HEALTH AND SAFETY ISSUE
Date: Tuesday, October 06, 2015 2:45:59 PM

At a NCPC community meeting Council President Lynette McElhany expressed concern that much of her district is only one foot above sea water, and therefore the rise in sea level would be a danger to her constituents. I took that as a request for more information, and began looking.

We need to face the "real evidence." in the words of Desley Brooks.

Climate change is not an emotional issue, it is a scientific fact that arouses emotions.

Climate change is a scientific fact and, because of paid phony experts hired by the petrochemical industry, a phony political controversy.

FACTS

The inevitable rise in sea level is a scientific fact, according to the most authoritative and prestigious sources.

I asked my brother, Dr. Jonathan Sanford PhD, one of the world experts on banking in developing countries, for scholarly evidence to report to the council. He referred me to a number of scholarly journal articles, press releases and other communications that came from NASA around August 26-28.

In his words, this is the authoritative source. "If you believe men really walked on the moon, then you will believe that the sea will rise dramatically, and soon."

NASA

I call your attention to an official news release which provides the facts of the matter in scientifically cautious but explicit words. It is not a news story. It is the words of NASA written to be understood by lay persons.

<http://www.jpl.nasa.gov/news/news.php?feature=4700>

THE DIRECT EFFECT ON OAKLAND

By the end of the century many parts of Oakland will be under sea level, including major arterials and train lines, and the port and the anticipated terminal.

Accrdomg to NASA the anticipated rise in sea level will be three feet in the next hundred years.

What they are not able to predict authoritatively is how much will occur in the next ten or twenty years.

We know that in storms water washes across the Embarcadero in San Francisco, and businesses need sand bags to keep water from encroaching under their doors. This health and safety issue is happening right now.

REASONS FOR IMMEDIATE CONCERN

According to this press release, factors which have kept the sea level low could change soon and we could have a significant rise without warning. We need to be preparing for that change.

EXACERBATIONS

Note that Nasa is basing projections on current levels, what is already happening, not what might happen if we add to the problem by increased burn of fossil fuels.

If the Oakland City Council can help reduce carbon emissions even a little by delaying or preventing the burning of coal in Asia, that will reduce or delay the impact of this ecological crisis on the people of Oakland somewhat, but the message to the rest of the world could have a significant impact, a ripple effect as cities and countries look beyond our parochial issues to health and safety of the world.

This international crisis is also a direct crisis for Oakland's well being.

That is the core "health and safety" issue on the table, and the reason to do everything possible to mitigate the problem from becoming even worse.

If the council prevails in stopping the coal shipments through Oakland it will be a signal to our residents that Global Warming is real and a significant threat to our city, to my house, to the ability to get mortgages which extend into the very certain and

uncertain future.

FURTHER RESEARCH.

I do not accept the responsibility to find every scientific article pertaining to this subject. I am a private citizen with limited resources.

You have a staff to research this problem. I claim that it is THE problem and we all must not lose sight of it.

A PERSONAL NOTE

Will Oakland have to make economic sacrifices if we refuse to ship coal? I don't think so, but even if we do, how do they compare to the other sacrifices we will suffer from climate change? As the saying goes, why worry about your teeth if your are going to lose your head.

A dental bridge came off in my mouth yesterday, and I am delaying going to the dentist today because I feel such urgency to get this issue into the record in this way. There is a deadline in 90 minutes and I know that is the priority in my life. I am asking the Council to have a sense of the priorities involved in the issue of shipping coal.

COAL NEEDS OAKLAND. OAKLAND DOESN'T NEED COAL

+++++

Paul Sanford

EXIT TO OAKLAND

752 18TH ST. Oakland, Ca 94612

cell: -268-1332

From: [Margaret Rossoff](#)
To: [Cole, Doug](#); [DL - City Council](#); [Office of the Mayor](#); [Cappio, Claudia](#); [Monetta, John](#); [BParker@oaklandcityattorney.org](#)
Subject: Public comments regarding health and safety of coal
Date: Tuesday, October 06, 2015 3:37:57 PM
Attachments: [Comment from Rossoff re Jobs.pdf](#)

Attached are my comments to be included in the documentation regarding the proposal to include coal among the OBOT commodities.

Margaret Rossoff
4154 Opal Street
Oakland, CA 94609
[\(510\) 653-3236](tel:(510)653-3236)

From: [Barbara Haya](#)
To: [Cole, Doug](#)
Subject: Comments on coal's public health and safety impacts: Response to questions #2 & #7
Date: Tuesday, October 06, 2015 4:02:43 PM
Attachments: [Haya comment on Oakland coal export terminal.pdf](#)

Please find my comments attached.

Sincerely,
Barbara Haya

--

Barbara Haya, PhD
Research Associate
Berkeley Energy & Climate Institute
bhaya@berkeley.edu
202-306-0576-c

Comments on coal's public health and safety impacts: Response to questions #2 & #7

October 6, 2015

Dear Oakland City Council,

Thank you for the opportunity to comment on the serious public health and safety impacts of the emissions from coal export through the Oakland port.

U.S. coal accounts for around eight percent of global carbon dioxide emissions since 1990.¹ Efforts to lower greenhouse gas emissions in Oakland and California, and lower coal use throughout the United States through the Clean Power Plan, will be negated to the extent that the coal we work to avoid using here is exported to be used elsewhere. I understand that the coal terminal would be able to export approximately nine million tons of coal a year. If this amount were exported and combusted, it would produce around 17 million tonnes of carbon dioxide per year,² approximately half of the average annual reductions required by AB 32 from 2013 to 2020.³ This terminal would directly conflict with the goals and efforts of Oakland and California to reduce greenhouse gas emissions. By facilitating the export of this coal we are allowing emissions from coal we avoid using domestically to continue to fan California fires, stress our water system, and cause asthma in our children.

The construction of this terminal will enable more U.S. coal to be exported and used. A new export terminal will enable a larger flow of U.S. coal out of the country. New export terminals may also justify the continued operation of existing terminals, in the same way that the existence of other west coast coal terminals is now being used to justify the construction of this terminal in Oakland. Increased flows of coal exports can extend the lives of coal mines that would otherwise close due to current low coal prices and demand in the United States. The trend must be towards closing U.S. coal export terminals, not opening new ones, allowing more U.S. coal to remain in the ground.

I stress that I, along with many other Oakland residents, strongly oppose the export of coal through the Oakland port.

Sincerely,

Barbara Haya, PhD
Research Associate
Berkeley Energy & Climate Institute
University of California, Berkeley
bhaya@berkeley.edu

¹ For emissions from U.S. Coal see the U.S. Energy Information Administration August 2014, Monthly Energy Review. For global emissions see CAIT Climate Data Explorer. 2015. Washington, DC: World Resources Institute. Available online at: <http://cait.wri.org>

² 9 million tons coal export per year * (20.16 mBTU/ton of coal) * (205.6 lb CO₂/mBTU) * (0.907 metric tonnes/2000 lbs). This is a conservative figure since it assumes that the coal will not be completely combusted.

³ Cumulatively, from 2013 to 2020, the total reductions required from projected business-as-usual emissions to meet the declining cap established by California's cap-and-trade program is 273 million tonnes CO₂-equivalent, or 34 million tonnes CO₂-equivalent per year.

From: [Colin Miller](#)
To: [Cole, Doug](#); [DL - City Council](#); [Office of the Mayor](#)
Cc: [Corrine Van Hook](#); [Bay Localize Steering Committee](#)
Subject: Bay Localize Comment Letter - Clean Energy Jobs, NOT Coal in Oakland
Date: Tuesday, October 06, 2015 4:30:10 PM
Attachments: [Bay Localize Comment Letter - Clean Energy Jobs Not Coal Exports - Oct 6 2015.pdf](#)

Dear Oakland City Council Members & Mayor Schaaf,

Please see attached for Bay Localize's comment letter regarding the coal exports issue.

Thank you for supporting a healthy, economically vibrant and resilient Oakland.

Sincerely,

Colin Miller and Corrine Van Hook, Co-Directors

Colin Miller
Co-Director, Bay Localize
Program Manager, Local Clean Energy Alliance
Coordinator, Clean Energy & Jobs Oakland Campaign of the Oakland Climate Action Coalition

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(646) 703-4837 - cell

“Power without love is reckless and abusive, and love without power is sentimental and anemic. Power at its best is love implementing the demands of justice, and justice at its best is power correcting everything that stands against love.”

- Dr. Martin Luther King, Jr.

Learn more about the Local Clean Energy Alliance by checking out our [video "Community Choice, Community Power"](#).



October 6, 2015

Dear Oakland City Council Members and Mayor Schaaf,

We are writing you on behalf of Bay Localize, a non-profit community-based organization rooted in Oakland working to build equitable and resilient communities in Oakland, the Bay Area and beyond.

The maritime bulk terminal being developed for the city at the former Oakland army base was intended to clean up pollution and create jobs for the local community — not threaten our health, economy, and climate.

1. Coal is bad for community health.

- Open-top rail cars that transport coal lose up to 600 pounds of coal dust per car; this translates to 60,000 pounds of toxic fine particulate matter entering our air and water for every trip made by a coal train. Coal dust, plus more diesel emissions from increased freight traffic, would intensify the air pollution already plaguing West Oakland.
- Coal dust can cause build up on the tracks, causing derailments and spontaneously explosions. West Oakland residents are already overburdened by industrial pollution. They're already twice as likely to visit the emergency room for asthma as the average Alameda County resident, and are also more likely to die of cancer and heart and lung disease.
- Coal dust causes decreased lung capacity, childhood bronchitis, asthma, pneumonia, emphysema, and heart disease.

2. Coal is bad for the local economy and workers.

- Coal is an increasingly anti-union industry. Oakland should support projects that create good union jobs.
- Oakland is becoming known worldwide as a green and innovative city. Let's not throw that reputation away by making a deal with the dirtiest fossil fuel industry on the planet.
- Longshoremen who work at coal-export facilities are exposed to serious health risks. Prolonged, direct exposure to coal dust has been linked to health issues such as chronic bronchitis, decreased lung function, emphysema, and cancer. Coal dust has also been shown to increase the risk of mortality from heart disease.

Bay Localize, 436 14th Street, Suite 1216, Oakland, CA 94612

(510) 834-0420 • www.baylocalize.org

A project of Earth Island Institute.

3. Coal is bad for climate.

- California has worked hard to be a coal-free state. We do not burn coal here. But while the state is setting aggressive carbon-reduction targets, this terminal would allow the most carbon-polluting fuel to be brought to market. By stopping these coal exports, we can limit the amount of dangerous climate disrupting pollution that is threatening families in our community and throughout the world.
- The mining, transport, and burning of this coal would result in over 12.5 million tons of greenhouse emissions each year. That's like adding more than two million passenger cars to the road each year.
- There is no such thing as clean coal. Utah coal contains mercury, carbon, and other hazardous pollutants that will harm air quality, increase respiratory illness rates, and accelerate climate change. These pollution impacts are global and local -- many of these pollutants blow over the ocean and increase pollution rates in California.
- Whether it's burned here or abroad, everyone will feel the effect of coal on our global climate.

Please use this opportunity to keep coal out of our Oakland and the Bay Area, and out of our air and water. We have an opportunity to build a healthy, sustainable Oakland. Let's not throw that away on a deal with the dirty, dying coal industry.

At the September 21 City Council hearing, three of our youth leaders spoke in strong opposition to the exporting of coal out of Oakland. In addition to the negative impacts of coal exports listed below, they also spoke to the potential and the promise of local clean energy jobs through Community Choice energy.

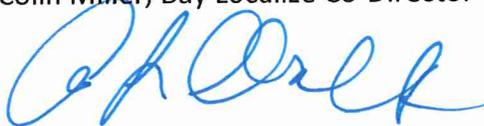
The City of Oakland already passed a resolution on Community Choice energy, and as early as Spring of 2017, Alameda County's East Bay Community Energy program may launch, with the potential for creating hundreds of high-quality, unionized clean energy jobs for Oakland residents, especially for low-income communities and communities of color most impacted by poverty, pollution, and climate change.

We don't have to choose between community health, resilience, sustainability, and jobs. This is a false choice. With clean energy jobs developed through Community Choice, we truly can have both.

Sincerely,



Colin Miller, Bay Localize Co-Director



Corrine Van Hook, Bay Localize Co-Director

Bay Localize, 436 14th Street, Suite 1216, Oakland, CA 94612

(510) 834-0420 • www.baylocalize.org

A project of Earth Island Institute.

From: [Maggie Ramos](#)
To: [Cole, Doug](#)
Cc: [DrBurns_AOL](#); [Woo, Winnie](#); [HJones@tlspops.com](#)
Subject: RE: Dr Washington Burns" letter to the City Council re: Coal"s health and safety impacts
Date: Tuesday, October 06, 2015 11:53:30 AM
Attachments: [Letter To Council Members.pdf](#)

Sending on Behalf of Dr. Burns

Hello Mr. Cole,

Dr. Burns asked that I ensure that you received this letter regarding coal's health and safety impacts. Please let me know if you have any questions or concerns.

Regards,
Maggie Ramos

Begin forwarded message:

From: "Woo, Winnie" <WWoo@oaklandnet.com>
Date: October 2, 2015 at 4:37:30 PM PDT
To: "Schaaf, Libby" <LSchaaf@oaklandnet.com>, "McElhaney, Lynette" <lmcelhaney@oaklandnet.com>, "Kalb, Dan" <DKalb@oaklandnet.com>, "Kaplan, Rebecca" <RKaplan@oaklandnet.com>, "Reid, Larry" <LReid@oaklandnet.com>, "Brooks, Desley" <DBrooks@oaklandnet.com>, "Gallo, Noel" <NGallo@oaklandnet.com>, "Campbell Washington, Annie" <ACampbellWashington@oaklandnet.com>, "Guillen, Abel" <AGuillen@oaklandnet.com>
Cc: "Cole, Doug" <DCole@oaklandnet.com>, "Cappio, Claudia" <CCappio@oaklandnet.com>, "Wald, Mark" (MWald@oaklandcityattorney.org)" <MWald@oaklandcityattorney.org>, "Monetta, John" <JMonetta@oaklandnet.com>
Subject: Coal's Public Health and/or Safety Impacts

Sending on behalf of Claudia Cappio.

Dear Interested Parties –

This email pertains to the September 28, 2015 email notice pertaining to the follow-up questions on Coal's public health and/or safety impacts (see attached). The City will extend the comment period by 24 hours due to the City's website being inaccessible on Thursday afternoon, October 1 and Friday morning October 2, 2015. The new deadline to submit comments is no later than **Tuesday, October 6, 2015 at 4:00 pm**. As with the previous notice, please direct responses to Douglas Cole, at dcole@oaklandnet.com. Thank you for your patience in this matter.

Regards, Claudia Cappio

Winnie Woo
Executive Assistant
City of Oakland
Office of the City Administrator
One Frank H. Ogawa Plaza, Suite 301
Oakland, CA 94612

Tel: (510) 238-7798
Fax: (510) 238-2223



Prescott-Joseph Center
for Community Enhancement

PRESCOTT-JOSEPH CENTER for Community Enhancement, Inc.

October 4, 2015

Oakland City Council
City of Oakland

Dear Council Members:

I am Washington Burns M.D., Executive Director of the Prescott-Joseph Center, Director of the Breathmobile Program (Mobile Asthma Clinic), Chairperson of the Alameda County Asthma Coalition and a member of the Regional Asthma Management Prevention Advisory Committee (RAMP).

I grew up in West Oakland during my teen years and returned in 1995 to serve on the founding board of Prescott-Joseph Center. I have served for 19 years now as its' Executive Director and have volunteered my full time and energy to serve in this capacity.

The mission of our organization is to improve the lives of the under-served residents of West Oakland. I relate to the people of West Oakland and have dedicated my life to using my medical education and training for the betterment of the West Oakland community, its' health, safety, and well-being.

The Port of Oakland invited me to serve on its' Maritime Air Quality Improvement Committee because of my expertise and commitment to cleaner air in the West Oakland community. I am recognized for my work in the community as a clean air advocate. I worked very hard to successfully bring the Breathmobile to West Oakland which has now also expanded to serving other areas in the Bay Area where there are asthma disparities in low-income people. The Breathmobile has been very successful in reducing Emergency Room visits, hospitalizations and school absenteeism. This has been a very successful operation and *because we are actually providing direct care in the community, I can speak firsthand to the health issues that our children are experiencing.*

The Port of Oakland's recent expansion efforts, presented significant challenges to our community as it related to increased truck traffic and diesel emissions. This was a major challenge to our community. We recognized the importance of the Port and its' role as the economic engine of our region and providing jobs for many in our community who depended on that for their livelihood. Rather than stop diesel burning trucks from coming into Oakland and the Port of Oakland, we worked together to find innovative ways to mitigate air pollution from this source and improve operations so that today the Port of Oakland boasts some of the cleanest port operations in the country. This was



Prescott-Joseph Center
for Community Enhancement

PRESCOTT-JOSEPH CENTER for Community Enhancement, Inc. the direct result of our collaboration with the Port and all of the regulatory agencies to develop mitigations that were reasonable and that would enable us to hold the Port accountable for operating in the most environmentally sensitive way. We were successful in this effort and it has been seen by all as a win-win situation. We protected the integrity of the Port's role as an economic engine that provides jobs and commercial benefit while at the same time ensuring that the community health and safety concerns were recognized and strictly adhered to by the Port. We continue to hold the Port accountable to every commitment made.

Relative to the issue of exporting coal through Oakland, I would like to offer these comments and findings. Unfortunately, in no way are we going to prevent the world-wide use of fossil fuels, petroleum, natural gas, and coal. More than 40% of the world depends on coal for electrical power and even after reaching the lofty renewable energy goals in 2035, more than 30% of the world will still need to rely and depend on coal.

As it relates to being a cause of respiratory disease and asthma, I would like to direct you to several articles in particular from Europe and the United States that state there was no recognizable respiratory diseases in children growing up even in areas where there was opencast mining of coal.

***Oxford Journals
Medicine & Health
International Journal of Epidemiology
volume 30, Issue 3 - pp. 556-563***

Prevalence of Asthma and Other Respiratory Symptoms in Children Living Near and Away from Opencast Coal Mining Sites

Tanja Pless-Mulloli, Denise Howel, and Helen Prince

Conclusions: There was little evidence of an association between residential proximity to opencast mining sites and cumulative or period prevalence of respiratory illness, or asthma severity. Some variations in health outcomes between communities remained unexplained.

Key Messages:

- There was little evidence for an association between children's residential proximity to opencast mines and the prevalence of asthma, wheeze, bronchitis or other respiratory illnesses.
- The prevalence of respiratory symptoms in children in the rural and semi-urban study communities was similar to that in other studies.
- There was considerable unexplained variation in some health outcomes without a discernible pattern.

***Occupational. Environmental Medicine - UK
2000, Volume 57 pp. 145-151***



Prescott-Joseph Center
for Community Enhancement

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Living Near Opencast Coal Mining Sites and Children's Respiratory Health

Tanja Pless-Mulloli, et al.

Social Scientific Medicine
2003 Aug 57(3) pp. 437-51.

"It Wasn't the Plague We Expected." [Parents' perceptions of the health and environmental impact of opencast coal mining.]

Moffatt S1, Pless-Mulloli T

School of Population and Health Sciences, Medical School, University of Newcastle upon Tyne, Framlington Place, Newcastle upon Tyne NE2 4HH, UK. s.m.moffatt@ncl.ac.uk

Abstract Finding:

This qualitative research was undertaken in tandem with an epidemiological investigation aiming to establish whether opencast coal mining adversely affected children's respiratory health. Using a social construction approach, the centrality of health claims in environmental health disputes becomes apparent for a number of claims-makers....

This paper explores the health and environmental concerns of parents living close to opencast coal mines in the UK and characterizes parental risk perceptions in relation to children's asthma status. *No link was found between children's asthma and exacerbation of the condition although some parents of children with asthma had greater concerns during the opencast planning stage.* In fact, parents' discourses on children's health largely mirrored the epidemiological findings which showed increased dust, no increase in asthma prevalence but higher rates of general practitioner (GP) consultations for respiratory conditions suggesting that the commonly observed lack of convergence between lay and expert knowledge should not be taken for granted.

Environmental health studies which incorporate epidemiological and social approaches simultaneously have a better chance of arriving at conclusions meaningful to affected communities and facilitate greater understanding of environmental disputes.

We need to acknowledge that the operation being proposed here in Oakland is merely the transport and transfer of coal from rail to ship. We should not equate *burning coal with carrying coal*. There is no mining or processing coal. What is important here, in my opinion, is the conclusion reached by the medical researchers cited. Education and social awareness designed and implemented to help our community better understand asthma and respiratory disease is critical in helping resolve any environmental dispute or concern. The Breathmobile has been an excellent tool in helping parents, teachers, and counselors understand asthma and respiratory disease and what they can do to improve the health of their children who may suffer from this condition.

Third and most importantly, if Terminal Logistics Solutions (TLS) does what it has committed to do, going above and beyond what is required, transferring high grade coal in covered cars in a way that it never sees the light of day to closed storage terminals



Prescott-Joseph Center
for Community Enhancement

PRESCOTT-JOSEPH CENTER for Community Enhancement, Inc. and then transferring it to ships where it again never sees the light of day, there is, in my opinion, absolutely no danger to Oakland residents nor West Oakland residents in particular.

It is our job to hold TLS to those mitigation commitments they have made. From a public health point of view, we should be advocating for safe handling and storage of coal. We should continue to look for ways of mitigating the way coal is transported and handled. Oakland can be a model in this regard just as we have been with the mitigation of diesel emissions at our port.

Finally, this project will bring needed economic benefits to Oakland and West Oakland residents. More than half of the 2400 jobs generated by the project are earmarked for Oaklanders with priority given to our residents right here in West Oakland. TLS has also committed to implementing a meaningful program of community and socially responsible benefits that can be used to support sorely needed educational and health related programs in our community.

I urge you to consider these comments in your review of this important matter.

Sincerely,

Washington Burns M.D.
Executive Director
Prescott Joseph Center



Prescott-Joseph Center
for Community Enhancement

PRESCOTT-JOSEPH CENTER for Community Enhancement, Inc.

October 4, 2015

Oakland City Council
City of Oakland

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I urge you to consider these comments in your review of this important matter.

Sincerely,

Washington Burns M.D.
Executive Director
Prescott Joseph Center

From: [Josiah Johnston](#)
To: [Cole, Doug](#)
Cc: [Monetta, John](#); [Cappio, Claudia](#); [DL - Council Members](#); [Office of the Mayor](#)
Subject: Coal in Oakland comments
Date: Tuesday, October 06, 2015 11:57:14 AM

Dear City Council Members, City Administrator, and Mayor of Oakland,

If 4.4 million metric tons of coal is exported and burned annually as proposed, its direct carbon emissions would be three times larger than California's entire annual emission reductions (See this spreadsheet for calculations: <https://goo.gl/16qeyh>). Blocking this coal terminal is possibly the single-largest action Oakland can take to reduce global greenhouse gases because reducing US coal export capability will likely result in less domestic coal mining.

In regards to the question, "If coal does not go through Break Bulk Terminal, what are the reasonable assumptions for what will happen to that coal and why?"

Up and down the west coast, communities are making it more and more difficult to ship coal across the Pacific. If Oakland blocks this coal terminal, there are no guarantees the coal industry will find another export terminal. There are a finite number of major ports on the west coast. Each port that blocks coal reduces the total export capacity and environmental damages from coal. Even if another port accepts this particular coal in the short term, Oakland will have done its part to construct a larger "coal blockade". Domestic coal consumption is also declining, so coal mines may actually slow down if Oakland blocks coal from this terminal.

The financial case for a coal export terminal is also poor. According to the International Energy Agency, the rate of global demand growth is declining, and low coal prices have caused many coal plants to operate at losses in recent years. The coal industry is also experiencing institutional divestments as stakeholders are increasingly concerned about pollution and related liabilities. If the port makes any investments in coal-handling infrastructure, there are no guarantees that coal export would be profitable long enough to pay for the infrastructure costs.

Regards,
Josiah Johnston
PhD Energy and Resources
Postdoc, University of California Berkeley
siah@berkeley.edu

From: [Carolyn Norr](#)
To: [Cole, Doug](#)
Subject: Answers to Coal Questions
Date: Monday, October 05, 2015 8:19:20 PM

These are my responses, as an Oakland citizen, mother of two, and OUSD teacher.

Thank you for considering,

Carolyn Norr
2725 26th Ave
Oakland

1. Since this project would impact the whole planet, by furthering the release of greenhouse gasses, I would suggest that "adjacent neighbors" be defined very broadly. At the same time, it would be only fair to focus especially on West Oakland, where people are already facing an unfairly high burden of toxins, and are at risk for sea level rise.
3. I believe after hearing from experts that TLS and CCIG do not have the authority or ability to mandate something that has never been done, ie: covered cars.
4. Clearly, the federal government is not able to tell the city what to develop on lands owned by the city. This is not a railroad issue at this point. That is a cop out.
7. This is the heart of the issue to me. The coal must stay in the ground. Scientists agree that the coal must stay in the ground for our species to continue. I have two young children, and I teach other young children, and I would like them to have a chance to continue their lives in full. Most if not all of the people involved in this issue are not in a position to legislate on a global level. But we are able to stand up locally. And it is a moral imperative and a responsibility to our children that we must. More and more people are standing up locally. By saying no to coal we become part of the solution. Coal has been pushed out of more and more terminals. Coal is a dying industry. That's good, because it's either dying, or we are.
9. See above. It would be better to set an example for Richmond that we aren't going to sacrifice our planet or our kids lives to make a developer richer.

From: [Kevin Mulvey](#)
To: [Cole, Doug](#)
Subject: Coal Exports
Date: Monday, October 05, 2015 4:57:06 PM

Dear Sirs/Mdms -

I am adamantly opposed to coal being exported from Oakland for the following several reasons:

- 1) Coal dust is unhealthy for local residents and businesses, regardless of its amount. The only amount that is safe is zero.
- 2) There is no way the city can mandate or enforce rail car mitigation efforts due to federal preemption.
- 3) Coal is an economic loser. The coal industry is on its last legs. Domestic markets are shrinking rapidly and international ones are following suit. Coal companies are going bankrupt and investment dollars are fleeing the industry. The world over-supply for coal from countries like Australia, Poland, Indonesia and South Africa will ensure continued downward pricing pressure on international coal supplies. Why in heaven's name would we allow this potentially valuable terminal to be obligated to use 49% of its capacity for 66 years for a dying industry, that is also environment-damaging and planet-killing?
- 4) Coal is the dirtiest and most carbon emitting of all fossil fuels. Scientists tell us that 350 ppm of carbon is the max we can tolerate if we are to hold global temperature increase to less than 2 degrees. Tragically, we are already at 400 ppm. How can it make any sense to continue to dump more carbon pollution into the atmosphere anywhere in the world, leading to global sea level rise, that will directly impact us in Oakland, especially in low lying areas, including the army base!
- 5) Railroad traffic to supply the export terminal will add further to already 24 hour/day train horn disturbances. If you think trains are out of sight and out of mind during night time, you are wrong. I invite you to attempt to get an uninterrupted night's sleep anywhere within a mile from the train tracks, with train horns blasting at any hour of the night - at 2pm, at 3 pm, at 4 pm, at 5 pm. I am regularly woken multiple times during the night many times each week. I can assure you this too has a health impact, and not a favorable one.
- 6) California is a coal free state, and the Oakland city council is on record as opposing coal exports. Gov. Brown says 90% of coal must remain in the ground if we are to have a hope of beating back climate change. Does that mean the other 10% can be Phil Tagami's? And how would it look with the Mayor is going to Paris in December to speak about Oakland as a sustainable city if Oakland becomes the last gasp refuge for the US coal industry.
- 7) Phil Tagami is not to be trusted. He said he has no intention of exporting coal. Now he said it is the only way for the project to be financially feasible. And now he said what he said before was true then but not now because the situation has changed. Which can only mean that whatever he says now can't be relied on since the situation could be different in the future. His job projection numbers are as fictitious as his grandiose funding theatrics.

8) Business that was being attracted to Oakland as a progressive, affordable base, will choose to go elsewhere if the city chooses to be the facilitator of a dirty, dying industry. Danny Kennedy, founder of Sungevity, one of the green technology companies now based in Oakland, and employer of thousands of good, clean jobs, has said progressive, clean tech companies will flee Oakland if it becomes a west coast coal export hub,. He is right.

9) If the Utah coal money is utilized in this project, environmentally conditioned federal TIGER funds and similar California funds will be denied, thus causing the project to financially collapse because coal is included!

10) The army base project is a once-in-a-generation opportunity for Oakland to create a future-oriented export platform, that will connect the bay area to the Asia-Pacific for decades into the future. Let's be sure we do so in a way that when we look back at this opportunity 10-20-30 years from now we were proud of the vision we had and the political will we mustered, and not be intimidated by a politically connected insider who is willing to sell out our city for a last gasp chance to milk a dying cow.

Yours truly,

Kevin Mulvey
1048 Aileen St.
Oakland, CA 94608
610-235-6541

From: [Singer, Debra](#)
To: [Cole, Doug](#)
Subject: Coal shipping Plan/ Port of Oakland -
Date: Monday, October 05, 2015 3:47:38 PM

I am a resident of West Oakland (at 12th & Pine, near the port and the Waste Transfer Station). I work in a Biochemistry lab at UCSF in SF, as a grant writer for researchers doing basic research on potential therapies for untreatable cancers and other diseases.

I am writing in strong opposition of the idea to ship coal through California to the port in Oakland for export. The health risk to all of us nearby and anyone involved in processing this coal is too high. Even if all residents nearby profited with billions of dollars, the money would not outweigh the harm that comes with coal. When your health is gone, money is worthless. Clean air and water are much more valuable than any amount of human currency.

This coal shipping plan is devised to benefit a few financially: it will hurt MANY in ways that will outweigh any amounts of money.

There is nothing 'clean' about coal - from extraction, shipping, handling, processing - it is toxic to all nearby. (Overwhelming evidence shows that remaining fossil fuels must stay in the ground, for the health of all humanity.)

The community here in West Oakland for years has been disproportionately affected by horrible health effects from pollution, diesel, traffic at the port, the Waste Transfer Station stench, garbage etc. Rates of cancers, metabolic diseases, asthma and respiratory damage including COPD are much higher. Breathing risks are cumulative from particulates in the air.

Do you know what its like to struggle to breathe?

To have trouble walking a few steps or raising your arms to even be able to change your clothes? Sometimes it takes 3 hours for my father to change his shirt as he has to rest from every movement. It is heartbreaking. He has COPD- he has to be on oxygen 24/7 and take multiple pills, have multiple check ups with cardiologists, pulmonologists. Its meant sudden calls that he's in an ambulance rushing to the hospital and urgent care for infections; we thought we'd lose him many times. All my mother could do for years was take care of him. The stress nearly took her down last year. This is normal life for those coping with advanced COPD and the multiple other diseases that come with it.

Do you know what COPD is? Chronic obstructive pulmonary disease is the name given to a range of lung issues- it starts with asthma, respiratory infections, emphysema. Did you know that by the time most people are diagnosed, they've lost 50% lung function? There is no way to restore lung function. Public health costs are enormous as people require more & more care, lose jobs, lose insurance, require more hospitalizations.

Did you know that the US federal government is so concerned about the rising COPD epidemic that it is soliciting and funding proposals for new technologies for early diagnosis of COPD to try to slow its progression? COPD is projected to become the 3rd highest killer in the US. The federal government is concerned about the **billions of dollars** in public health costs that will accrue as people lose their jobs and insurance and whole families go down in caring for them.

I know this as I recently participated in writing a major grant proposal to the NIH about COPD. I know it in a deeply personal way, trying to take care of my father with COPD.

Please do not risk all of our health for this short-sighted plan. Oakland needs to have a higher vision for better sources of energy and jobs- solar and wind energy and other clean industries are where the world is heading.

-Debra Singer
1233 Pine St., Oakland, CA 94607

Debra Singer
Macromolecular Structure Group
UCSF 600 16th St., GH S412E
SF, CA 94158-2517
tel 415. 476. 2829
fax 415. 476. 1902

From: [Jahmese Myres](#)
To: [Cole, Doug](#); [DL - City Council](#); [Office of the Mayor](#); [Cappio, Claudia](#); [Monetta, John](#); BParker@oaklandcityattorney.org
Cc: [Kate O'Hara](#)
Subject: Statement from EBASE Against Coal at the Oakland Army Base
Date: Monday, October 05, 2015 3:13:32 PM
Attachments: [Final Coal Statement_Sept 2015.pdf](#)

To Whom it May Concern,

Attached you will find a statement from the East Bay Alliance for a Sustainable Economy in opposition to coal at the Oakland Army Base. This statement should be submitted as apart of the public record on this issue.

Please contact me if you have any questions.

Respectfully,
Jahmese Myres
on behalf of EBASE

--

Jahmese K. Myres
Campaign Director
Revive Oakland!
510.893.7106 x329
workingeastbay.org

#blacklivesmatter

Join us for EBASE's 16th anniversary event, [Fired Up in 2015](#) on Sept 24th, 5:30p @ the Emeryville Hilton Garden Inn! Purchase tickets at: firedup2015.eventbrite.com

Beginning March 2nd, ALL workers in Oakland, CA must be paid a minimum wage of \$12.25/hr and accrue sick time. For questions, [click here](#)



EBASE

Building Power with Workers,
Community and People of Faith

A Good Job is a Healthy Job

A statement from the East Bay Alliance for a Sustainable Economy concerning coal through the Oakland Army Base

The East Bay Alliance for a Sustainable Economy (EBASE) advances economic, racial, and social justice by building a just economy in the East Bay based on good jobs and healthy communities. A **just and sustainable economy** is rooted in fairness and inclusion, dignity for all workers, and healthy and safe communities. We believe and we fight for **good jobs** that pay a living wage with benefits and are accessible to those with barriers to employment; and safe jobs that protect against workplace and environmental hazards.

With the Revive Oakland coalition, EBASE achieved a landmark Good Jobs Policy on the massive Oakland Army Base redevelopment that ensures good paying jobs for local residents. We are already seeing incredible success in the construction phase of this project, with 50.17% of construction hours performed by Oakland residents, 53.27% apprentice hours performed by disadvantaged Oakland residents.

At EBASE, we also believe that a good job must also be a healthy job. Workers should have access to proper safety training and equipment, and be protected from hazardous or dangerous materials that may present long- and short-term health risks. Low-income folks and people of color are often disproportionately exposed to environmental pollutants; both on the job and in their neighborhoods. **We are deeply concerned about the potential health hazards that coal presents to workers on the Army Base and the surrounding communities.** We reject the notion that we have to choose between good jobs and healthy communities and know that, in fact, all of our futures are intertwined.

In the years leading up to the final Disposition and Development Agreement for the Army Base, EBASE worked closely with the City of Oakland, and the development team, CCIG and Prologis. During the course of discussions about the project scope, we discussed the types of commodities that would come through a break bulk facility. **From these discussions, we were under the assumption that coal would not be a potential commodity.**

We hope that the City and the developers, Oakland Global, will uphold the health and safety of the workers and community by choosing commodities that do not present health risks.

EBASE continues to honor the cooperation agreement we signed with the City, and we are committed to the long-term success of the Oakland Army Base redevelopment. We believe that coal is not Oakland's only option. The Army Base redevelopment will be a world-class, state-of-the-art facility that will increase the efficiency of the transportation and logistics industry. **We believe that other, safer commodities can be moved through Oakland. We do not stand by coal at the Oakland Army Base, and we request that the Oakland Global seek out other, safer options.**

To create an inclusive economy with broadly shared prosperity, we must create good jobs that uplift the health and sustainability of the workers, their families and all our communities.

From: [Deborah Silvey](#)
To: [Cole, Doug](#)
Subject: Subject: Army Base Gateway Redevelopment Project
Date: Monday, October 05, 2015 1:50:39 PM

From: Deborah Silvey, Fossil Free California Coordinator
Date: October 5, 2015
To: dcole@oaklandnet.com
Subject: Army Base Gateway Redevelopment Project

Dear Sir:

I am writing on behalf Fossil Free California (FFCA), an organization of Californians concerned about the catastrophic effects of climate change. We are joining others in strongly opposing development of a coal export facility at the old Oakland Army Base site, while welcoming development of the bulk export terminal for handling other products.

FFCA's mission is to convince public and private institutions to divest from all fossil fuels: coal, oil and gas. Together with 350.org, we recently helped to pass SB 185, the bill sponsored by Senate Pro Tem Kevin de Leon. This bill requires our state pension funds, CalPERS and CalSTRS to divest from coal. With the governor's signature expected in a few days, we will be soon celebrate California as the first state to rid its pension funds of the dirtiest form of energy: coal.

Coal divestment has already moved large amounts of money out of coal companies--from the Norwegian Pension Fund to Stanford University. Recently our own University of California joined in the move away from coal. Coal is now a poor risk from a purely economic point of view. Movement away from coal is accelerating rapidly in the U.S. and developed countries, with developing countries also moving in that direction. It therefore makes no sense for Oakland to allow such a damaging coal project to endanger its citizens--especially its most vulnerable--at the same time as it would add over 12.5 million tons of greenhouse gas emissions each year.

There is a definite need for expanded port facilities on the West Coast. It is very likely that new private partners will step up to financially participate in development of this bulk export terminal to be used exclusively for products other than coal. FFCA urges you to develop the project as it was intended: to clean up pollution and provide benefits to the local economy — not threaten our health, economy, and climate. Please keep coal out of Oakland.

Sincerely yours,
Deborah Silvey

--

Deborah Silvey
Fossil Free California Coordinator

510-849-9577
510-333-8513 (mobile)

From: [Rebecca Milliken](#)
To: [Office of the Mayor](#); [DL - City Council](#); [Cole, Doug](#)
Subject: Opposition to Coal Export Terminal -- Berkeley Climate Action Coalition
Date: Monday, October 05, 2015 12:10:00 PM
Attachments: [BCAC_NoCoalExports_2015-10-05.pdf](#)

On behalf of the [Berkeley Climate Action Coalition](#), I write to submit the attached letter of opposition to the proposed coal export terminal.

--

Rebecca Milliken

Climate Action Coordinator, Ecology Center
(510) 548-2220x240 | ecologycenter.org
2530 San Pablo Ave., Suite H | Berkeley, CA 94702



Inspiring and building a sustainable, healthy, and just future for the East Bay, California, and beyond. Follow our work on [Facebook](#) and [Twitter](#), [subscribe](#) to our email updates, and [donate](#) today.



October 5, 2015,

Dear Honorable Mayor Libby Schaaf and Oakland City Council Members,

The [Berkeley Climate Action Coalition](#), whose membership includes over 500 East Bay residents, community organizations, and educational and religious institutions, writes to express its strong opposition to the proposed coal export terminal at the Oakland Global development. Although the Coalition is Berkeley based, we feel it is critical to weigh in a project that will have regional and global repercussions. Coal dust pollution with its consequent negative impacts on worker and community health, along with greenhouse gas emissions associated with the mining, transport and burning of coal, don't recognize city boundaries. The proposed coal terminal is more than a Oakland issue; it is a Bay Area issue.

Exporting coal is a dirty business, with dangerous local health impacts. Coal dust from transport enters our air and waterways, intensifying pollution already plaguing West Oakland and other low-income communities through which coal trains would travel. Coal dust causes decreased lung capacity, and increases rates of bronchitis, asthma, pneumonia, emphysema, and heart disease. There is no such thing as "clean coal." Utah coal contains mercury, carbon, and other hazardous pollutants that will harm air quality, and increase respiratory illness rates.

There are other reasons we don't burn coal in California — it accelerates climate change. It's counterproductive for Oakland to try to achieve the carbon emissions reductions in its climate action plan while at the same time exporting coal. Whether coal is burned in Oakland or China, the atmosphere doesn't know the difference. So while the state is setting aggressive carbon-reduction targets, this terminal would allow significant amounts of the most carbon-polluting fuel to be brought to market, resulting in the release of as much as 1.5 billion tons of CO².

Moreover, the project is economically risky. The markets for coal in the US and overseas are shrinking, as regulators are trying to reduce carbon emissions here and abroad. Coal is also an increasingly anti-union industry. While new jobs are critical, we need projects that will create safe, union jobs.

Solving the climate crisis means no more coal, period. Oakland has earned a reputation as a green and innovative city. Please continue to be a leader for sustainability and say, "No" to the coal terminal.

From: [Vien Truong](#)
To: [Cappio, Claudia](#); [Monetta, John](#); [DL - Council Members](#); [Cole, Doug](#)
Subject: Re: Protect Oakland
Date: Monday, October 05, 2015 10:56:04 AM
Attachments: [Protect Oakland.doc](#)

Replying all to include Doug Cole. Also reattaching letter in Word doc.

- Vien

On Sat, Oct 3, 2015 at 10:54 PM, Vien Truong <vien@greenforall.org> wrote:

Please find attached Green For All's letter urging Mayor Schaaf and City Council members to protect Oakland from this coal project.

- Vien

--

Vien Truong, Esq.
Chief Operating Officer | [THE DREAM CORPS](#)
National Director | [GREEN FOR ALL](#)
vien@greenforall.org | (510) 663-6500
[#cut50](#) | [#YesWeCode](#) | [#GreenForAll](#)
"Close Prison Doors, Open Doors of Opportunity"
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Connect with #cut50 on [Facebook](#) and [Twitter](#)
Connect with #YesWeCode on [Facebook](#) and [Twitter](#)
Connect with #GreenForAll on [Facebook](#) and [Twitter](#)

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Vien Truong, Esq.
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[#cut50](#) | [#YesWeCode](#) | [#GreenForAll](#)
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Connect with #YesWeCode on [Facebook](#) and [Twitter](#)
Connect with #GreenForAll on [Facebook](#) and [Twitter](#)



BUILDING AN INCLUSIVE GREEN ECONOMY STRONG ENOUGH TO LIFT PEOPLE OUT OF POVERTY

October 3, 2015

Dear Mayor Libby Schaaf and Oakland City Council,

I write to you today as the National Director of Green For All, as a former member of the City of Oakland's Planning Commission, and as a concerned citizen, to ask you to keep coal out of Oakland. Coal is bad for the health and safety of the community and workers due to its effect on air and water quality and its direct contribution to local climate change impacts like sea level rise and increased risk of fire and extreme weather.

Green For All is a national initiative to build an inclusive green economy strong enough to lift people out of poverty that was founded and is headquartered here in Oakland. Throughout the nation we see leaders and decision makers posed with the false choice between a clean, safe environment and jobs. I urge you, Oakland's Mayor and City Council, to see through the smoke and mirrors and choose a long-term, sustainable path to job growth and economic vibrancy in West Oakland.

It is easy to envision an alternative route to strong, vibrant job creation in West Oakland that is founded in the green economy – from energy efficient construction to solar installation, the green economy is rapidly expanding. Opportunities in the green economy extend to our waterfront, where a bulk and oversized terminal could focus on exporting products like wind turbines, aircraft and parts, pipes, pumps, and other machinery. The proposal to export Utah coal directs public and private capital to long-lasting infrastructure that will soon be obsolete, rather than to projects aligned with a 21st century economy. Such a project betrays the best interests Oakland residents.

Californians and our policy leaders have fought hard to eliminate our use of coal for good reason, and we should not support the export of this toxic fuel to be burned elsewhere. Whether it's burned here or abroad, the effect of coal on the global climate will be felt by everyone. While California is setting aggressive carbon-reduction targets, this terminal would bring to market enough coal to power 6.7 power plants, with devastating consequences for our climate.

Please stand with every Oakland resident who cares about global climate and community and worker health in opposing this proposal. Public land should be used for the public good, not for a dirty export project that will endanger us all.

Sincerely,

A handwritten signature in black ink, appearing to read "Vien Truong", with a stylized flourish at the end.

Vien Truong

From: [Beth Gunston](#)
To: [Cole, Doug](#); [Schaaf, Libby](#); [Kalb, Dan](#); [Gallo, Noel](#); [At Large](#); [Guillen, Abel](#); [McElhane, Lynette](#); [Brooks, Desley](#); [Campbell Washington, Annie](#); [Reid, Larry](#)
Subject: Oppose Coal Export
Date: Monday, October 05, 2015 7:33:52 PM
Attachments: [Coal Export Letter LCVEB.doc](#)

Dear Mayor Schaaf, Council Members, and Mr. Cole,
Please find the attached letter from the League of Conservation Voters of the East Bay
requesting your opposition to export of coal through Oakland.

Sincerely,

Beth Gunston

President, LCVEB



October 5, 2015

Mayor Libby Schaaf
Oakland City Council
Frank Ogawa Plaza
Oakland, CA 94612

Re: Oppose Coal Export

Dear Mayor Libby Schaaf and Oakland City Council,

The League of Conservation Voters of the East Bay urges you to put an end to the prospect of coal export from the bulk facility at the Oakland Army Base. Facilitating mining of coal in Utah, its transport to Oakland, and its export to be burned overseas is not the leadership on climate change Oakland should demonstrate. Oakland's reputation as a sustainable city, with one of the strongest climate action plans in the state, would suffer greatly if coal export were approved here. And given the city council's resolution opposing the transport of hazardous fuels through the city, Oakland should walk its talk.

West Oakland communities already experience some of the worst air pollution in the region, and coal dust and would contribute to asthma, lung disease, and death. This project also sends a message that we in California are willing to exacerbate already lethal levels of air pollution in China and outsource dirty energy even as we preach climate action at home.

Please oppose this misguided and dangerous proposal and instead make Oakland a leader in building a clean energy future and protecting our climate.

Sincerely,

Beth Gunston
President

Cc: Douglas Cole, Army Base Gateway Redevelopment Project, dcole@oaklandnet.com

From: [Paul Sanford](#)
To: [Cole, Doug](#)
Cc: [Paul Sanford](#); [Kristen Loomis-home](#)
Subject: Testimony on health and safety issues on shipping of coal.
Date: Sunday, October 04, 2015 7:53:23 AM
Attachments: [MENTAL HEALTH AND COAL final.html](#)
[MENTAL HEALTH AND COAL final.odt](#)
[MENTAL HEALTH AND COAL final.rtf](#)

Attached is my testimony on mental health as a health issue related to the shipment of coal through Oakland.

I submit three identical copies in three different formats for your convenience..

+++++

Paul Sanford

EXIT TO OAKLAND

752 18TH ST. Oakland, Ca 94612

cell: [805-268-1332](tel:805-268-1332)

MENTAL HEALTH AND COAL IN OAKLAND

by Paul R. Sanford,
752 18th Street, Oakland Ca. 94612

Paul.Sanford@gmail.com
805-268-1332

The following is a link to the page on depression in the DSM5, the official diagnostic tool for diagnosis of Mental Health disorders. <http://www.psnpalalto.com/wp/wp-content/uploads/2010/12/Depression-Diagnostic-Criteria-and-Severity-Rating.pdf> Please include it as part of my comments.

I am trained in the use of this diagnostic tool, and I have thirty years experience as a diagnosed patient with Bipolar Disorder, one of the symptoms being chronic depression.

My experience with presenting mental health issues to the general public leads me to expect your experts and team to dismiss my argument out of hand. If you do, that is just one more example of the way in which the Mental Health community has been marginalized and continues to be marginalized, in which Mental Health is not considered a “real” health concern, and that advocacy by the mentally ill on their own behalf is not trustworthy. Such an attitude is both tragic and insulting.

HELPLESSNESS AND HOPELESSNESS

I am a totally disabled, low income person with limited resources of time, energy, money, and influence. In this asymmetrical situation, the fact that I am the tiny “David” coming up against the huge “Goliath” of massive financial industries contributes significantly to my helplessness and hopelessness.

This sense that nothing matters, nothing can be done anyway, let's either give up, is a significant and prevailing mental health issue in poverty-burdened and traumatized Oakland. If the City Council is not able to stand up for us and stop the coal, if the council is outmaneuvered by big money interests, that is just business as usual, and we fall deeper into despair.

SUICIDE AND HOMICIDE

Depression changes the brain, so that reasonable solutions seem unlikely and ALL OR NOTHING THINKING begins to prevail. This is a significant clinical truth. When we feel backed up against the wall, we look for dramatic solutions that seem reasonable in our disordered state.

As a personal expert on depression, both as a patient and as a professional, I testify that the violence in my neighborhood of West Oakland can be linked to desperation and failure to have access to better solutions, and to hope itself.

I have put on benefits for the More Foundation, founded and led by Ann Jones. In West Oakland alone in the past 8 years she alone has helped 400 families in need who are families of the victims of violence. People turn to extremes such as violence and suicide when they get the message that they do not matter. Inflicting coal trains on us is wrong.

If you do not see the link between suicide and homicide, and the hopelessness and helplessness and belief that nothing can be done to stop bad things from happening, that the power structure is going to roll over us no matter what we do, etc. then you all on the council have not been paying attention to your own speeches.

Stopping the coal shipments is one small victory for our City, one that we can be proud of, like having a championship ball team, but it is more than symbolic in the case of coal, because the behind-the-scene machinations have been real and the council has looked helpless and seemed to lose hope.

The council can contribute to the general mental health by not acting helpless and hopeless, by taking

control of the situation for the benefit of all. (You do understand that the issue of jobs is a red herring based on lies? Offering people the promise of jobs that don't materialize is another way to lead to cynicism and despair.)

I have only explored one small dimension of mental health here, and only for the issue of Depression. I was diagnosed in 1987, and graduated with a Masters in Family Counseling in 1997, with over a thousand hours of field experience plus participation in a variety of group settings.

I was consumer representative on a variety of committees and supervisory groups with Solano County from 2007 to 2013

If you go to the link (I provide it here again) <http://www.psnpalalto.com/wp/wp-content/uploads/2010/12/Depression-Diagnostic-Criteria-and-Severity-Rating.pdf>

You will find many other symptoms of depression listed such as:

Lack of Concentration: (my ability to overcome my symptoms and write this letter is atypical.)

Fatigue or loss of energy. (People find their energy in spurts of anger)

Disturbed sleep. (Worrying about their children and the dangers of the coal train.)

Withdrawn, angry aggressive: (We blame the victims for this symptom instead of helping them..)

Failing performance, missing school or work, doesn't care about work (or school)

There is rising concerns about depression in our culture, and what many see as a kind of epidemic. There is a mountain of credible evidence on depression and its societal effects.

MY ARGUMENT IS THAT MENTAL HEALTH IS PHYSICAL HEALTH.

I believe that failure to stop the coal will contribute to people's distrust of government, to malaise, to indifference. Failure to stop the coal will add to the suffocating burden of depression and the accompanying feelings and thoughts of unworthiness, low self esteem, sadness and emptiness. These symptoms ARE PHYSICAL HEALTH ISSUES, as real as asthma or a broken arm from a train derailment, and they are present now. To exacerbate them would significantly impair the health and safety of the people of Oakland, especially West Oakland, and contribute to hopelessness and desperate acts of violence and self-harm, not to mention indifference to our own well-being.

If this argument is presented to a judge who lacks knowledge of depression and lacks compassion and empathy and insight into the mental and emotional needs of the people of Oakland it may not be seen as a compelling legal argument. However, it is your job as the council, to consider the situation from every possible angle.

Yes, people despair because they don't have jobs. Yes, people's health is impaired by coal dust. Besides that, we are at a fragile time in history in which people are giving up on the ability of government to do anything for our benefit, to stand up to entrenched special interests, and that is a clinically provable medical health issue.

Paul R. Sanford, October 3, 2015

MS (MFT,) California State University, Northridge
M. Div. (Southern California School of Theology at Claremont, United Methodist)
MA. (Drama) University of Washington
BA. Occidental College

From: jamesevann@aol.com
To: [Cole, Doug](#); [DL - City Council](#); [Office of the Mayor](#)
Subject: "No Coal in Oakland"
Date: Friday, October 02, 2015 3:33:59 PM

No Coal in Oakland !

What are our City Council and City Attorney doing ? Why the special hearing that caused hundreds of Oaklanders to spend needless hours away from jobs and family to tell the Council what it already knows ? Why the long delay in dealing with this illegal issue of coal that so clearly has a straightforward and mandated remedy.

The consultant's agreement specifically forbids materials at the break-bulk facility that have health or environmental impacts. States and nations all over the world are discontinuing mining, storage, and use of coal, primarily due to negative health and environmental consequences. Even China, the world's greatest user of coal, diminished coal imports last year by 22%. Coal contains highly toxic mercury and arsenic, and West Oakland, which already suffers among the highest asthma rates in the state, would be doubly impacted. Owing to its undeniable health and environmental impacts -- which cannot be completely mitigated -- coal is automatically excluded under the Army Base contract

Should the contractor have chosen to protest the prohibition, it was contractor's responsibility to have produced scientifically documented and tested studies conclusively proving that no health or environmental impacts are possible from shipping, handling, storage, long term holding, or re-handling coal for export. Lacking such study and its scrutiny, by and consensus of the scientific and environmental communities, automatically vetoes any consideration of "coal."

Secondarily, the specter of possible litigation appears to frighten council members. This is ludicrous. As revealed by Gene Hazzard's blog – Clean Oakland – the contract clearly states: "contractor shall not assign any part of its contract without approval of the city." How is it possible that the City is afraid to enforce its own contract ? If this is so, why have a contract at all. The city should simply anoint it favorite vendor with the simple instruction to "proceed however you choose" -- ludicrous !

While the September 21 special hearing was totally unwarranted, the community nevertheless responded enthusiastically and loudly proclaiming "No Coal in Oakland." Backing the community's near unanimous call, one of the broadest coalitions in recent memory – consisting of labor unions, businesses, faith organizations, public interest and community groups, and residents from all walks of life – filled City Hall and all its chambers with a boisterous protest against the disastrous possibility of storing and exporting coal from Oakland.

City Attorney -- Do your job ! Report to the City Council that the contractor has violated Sections X & Y of the contract, and that actions to terminate ARE ALREADY PROCEEDING !

City Council -- Get on the ball ! Immediately cease your 'hemming and hawing,' and give full instructions and backing to the City Attorney.

Then, publically announce to the residents of Oakland that you have acted decisively in the interest of the city to halt this illegal threat, and that as the City Council you pledge to be vigilant in protecting the health and safety of the residents and the city, as well as that of the planet.

James E Vann,
Long time resident,
Local and community activist,
Co-founder, Coalition of Advocates for Lake Merritt (CALM)
251 Wayne Avenue
Oakland CA 94606
[510-763-0142](tel:510-763-0142)

jamesevann@aol.com

From: [Jeff Perloff](#)
To: [Cole, Doug](#)
Subject: on shipping coal through Oakland
Date: Thursday, October 01, 2015 1:32:34 PM

As a city resident and an economist who studies energy and the environment, I am strongly opposed to shipping coal through Oakland. My two main concerns are that shipping coal via rail is locally dangerous. Moreover, the combustion of coal is a major threat to the world's environment.

The event that triggered the world's first Clear Air Act was a terrible tragedy related to coal. In December 1952, London had a "pea souper"--a fog so thick that people had trouble finding their ways home. Burning coal put large quantities of sulfur oxides into the fog. Exposed to moisture, the sulfur oxides produced a sulfuric acid mist, which caused massive inflammation of the lungs. All over the city, people with inflamed lungs died by suffocation. So many people died that undertakers started to run out of coffins; and florist ran out of flowers. According to the British Committee on Air Pollution, 4,000 people died prematurely during the 5 days of the fog; 8,000 more died in the next 2 months; the death rate was 2% high than normal during the following summer.

Of course banning coal has its economic and other costs. However, I believe that a cost-benefit analysis comes out strongly in favor of banning the shipment and use of coal.

Sincerely,
Jeffrey M. Perloff,
Professor of Agricultural & Resource Economics, UC Berkeley

P.S. In counting the effect of the development project on jobs, it is important to distinguish between short-term and long-run jobs. Cf the "funny numbers" from the debate on the Keystone Pipeline.

From: [Matthew Hart](#)
To: [Cole, Doug](#)
Subject: Coal-shipping at Army Base
Date: Thursday, October 01, 2015 12:22:41 PM

Mr Cole,

As an invested community member and homeowner in West Oakland (Prescott neighborhood, across I880 from the Army Base), the potential for coal to be shipped through our City and West Oakland neighborhoods is a frightening prospect that I believe will be detrimental to a community that has experienced substantial struggles.

I'd first like to begin with a more superficial aspect (albeit selfish), yet relevant nonetheless. Property values can be substantially altered by the addition of coal transport to our City and neighborhoods. Despite a recent uptrend in home and property prices, allowing coal through could have a drastic effect on property values which in turn could lead towards decreased revenue for the City. This may also make a lasting impact on the attractiveness of neighborhoods and deter further investment and rehabilitation of currently blighted communities, creating the potential for dangerous and "ghettoized" parts of our City. The end result is a state in which the benefits of economic stimulus at the Army Base come at the expense of widespread decline of our neighborhoods.

Public health and environmental impact are perhaps of the utmost concern when allowing such a drastic change happen when it comes to train shipments. The West Oakland neighborhoods, in particular, are beleaguered by substantial public health threats and environmental dangers already, and we cannot afford to allow them to increase. The neighborhood already houses a massive post office distribution center with incredible amounts of truck traffic, several garbage and recycling facilities with considerable truck traffic, the Port of Oakland which has semi truck traffic seemingly 24 hours a day, a water treatment plant, an incredible amount of industrial and manufacturing spaces, and is encompassed by the region's major highways. Yes, Oakland was built, and still is, a majorly industrial and manufacturing center. However, much of these uses are concentrated in one area, and any development in the future should aim to improve the area, not create more problems. Asthma rates in children in West Oakland are at levels never seen before, and it is our charge as a community to look out for one another, particularly those in lower-income areas, and make a place in which we would all can be proud of. I highly doubt that coal dust will add any benefit to the neighborhood, similar to what is happening to our neighbors in Richmond (<http://ww2.kqed.org/science/2015/06/22/coal-train-dust-worries-richmond-residents/>).

In addition, Oakland prides itself on being a progressive, sustainable community that makes efforts to be green and reduce impact on the Earth. It is counter intuitive to allow a dirty fossil fuel (that has drastically diminished in use in the last decade) to be shipped through our City.

It is very troubling that Army Base developer Phil Tagami made statements that there would be no coal in the project when looking for approvals. Now, magically, he has done an about-face -- after construction is already underway. This should be enough to prompt caution and raise some red flags on the integrity of the project. As such, I believe at an absolute minimum, further environmental study should be required of the coal transport effects on all aspects of life in West Oakland, though I believe that it should not be allowed, regardless.

It is time Oakland stands up for its principles, and I urge not only you to take these issues to heart for our community's well-being. I urge and plead Mayor Libby Schaaf and the City Council to stay strong on their previous stance to refuse to allow coal through Oakland. In the end, our City will be stronger and healthier.

Best regards,

Matthew Hart
1197 Pine Street
Oakland, CA 94607
720.281.5921

From: bostro@pacbell.net
To: [Cole, Doug](#); [Cappio, Claudia](#)
Cc: [Kalb, Dan](#); [Guillen, Abel](#); [McElhanev, Lynette](#); [Campbell Washington, Annie](#); [Gallo, Noel](#); [Brooks, Desley](#); [Reid, Larry](#); [At Large](#)
Subject: Comments on the public health consequences of coal in Oakland
Date: Thursday, October 01, 2015 10:49:24 AM
Attachments: [Ostro comments on HDR Engineering report for the CCIG coal trains.docx](#)

Dear Claudia Cappio and others:

I have attached my comments in response to your request on September 28 for information regarding the health effects of the proposed coal train transport through Oakland. I have focused on your issue #11 the HDR Engineering report on the health assessment of the proposed project. As you will see from my comments, I have demonstrated that there are serious problems and inappropriate conclusions with that report and I have indicated that it is very likely that there will be adverse health effects associated with blowing coal dust in West Oakland and Oakland in general. My conclusions are based on 25 years of experience as Chief of the Air Pollution Epidemiology Section of the California EPA (now retired), with responsibility for helping to set air quality standards for California as well as my work in developing standards for the U.S. EPA and the World Health Organization.

Thank you for allowing the opportunity to comment on this important issue.

Dr. Bart Ostro,, Ph.D.
Oakland, CA

From: [Cappio, Claudia](#)
To: nnadel@gmail.com
Cc: [Landreth, Sabrina](#); [Cole, Doug](#); [Woo, Winnie](#)
Subject: Follow up questions about Coal's Public Health and Safety Impacts
Date: Wednesday, September 30, 2015 9:58:18 AM

Greetings Nancy – because time is limited and Sabrina may not be available today, I wanted to provide an email response to your inquiry regarding the September 28, 2015 Follow Up Questions on Coal's Public Health and/or Safety Impacts. The City welcomes and encourages all interested parties to submit relevant and useful information and evidence in order to provide a complete public record. The questions were not "just for the developer", although some questions are geared more towards the developer. Regards, Claudia

Claudia Cappio
Assistant City Administrator
City of Oakland
1 Frank Ogawa Plaza Suite 301
Oakland, CA 94612
ccappio@oaklandnet.com
510 238 6654 -- direct
510 238 7798 -- Winnie Woo, Assistant

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From: [Woo, Winnie](#)
To: [Cole, Doug](#)
Subject: FW: Follow Up Questions on Coal's Public Health and/or Safety Impacts
Date: Tuesday, September 29, 2015 4:35:10 PM

Do you want to answer this?

From: Nancy Nadel [mailto:nnadel@gmail.com]
Sent: Tuesday, September 29, 2015 4:23 PM
To: Woo, Winnie
Subject: Re: Follow Up Questions on Coal's Public Health and/or Safety Impacts

These appear to be questions just for the developer. Is that correct?

On Tue, Sep 29, 2015 at 12:28 PM, Woo, Winnie <WWoo@oaklandnet.com> wrote:
Sending on behalf of Claudia Cappio.

Dear Interested Parties:

Thank you for the very informative oral and written evidence submitted to date as part of the City's September 21, 2015 Public Hearing on the public health and/or safety impacts and other impacts of the transportation, transloading, handling and/or export of coal products in/through the City of Oakland.

Although we are still reviewing the materials submitted before and during the hearing, we are requesting answers be provided to the attached list of questions, some of which are technical and/or legal in nature. Please provide responses **no later than Monday, October 5, 2015 at 4:00pm**. Please direct responses to **Douglas Cole, at dcole@oaklandnet.com**.

The attached letter, all responses received and the written materials submitted as part of the public hearing are (or will be) posted on the City's website at:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485>

Winnie Woo
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One Frank H. Ogawa Plaza, Suite 301
Oakland, CA 94612
Tel: [\(510\) 238-7798](tel:(510)238-7798)
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From: lora.jo.foo
To: [Cole, Doug](mailto:Cole.Doug@cityofoakland.org); [DL - City Council](mailto:DL@cityofoakland.org); [Office of the Mayor](mailto:OfficeoftheMayor@cityofoakland.org); [Cappio, Claudia](mailto:Cappio.Claudia@cityofoakland.org); [Monetta, John](mailto:Monetta.John@cityofoakland.org); BParker@oaklandcityattorney.org
Cc: aperez4@up.com
Subject: Response to Question #8 - coal trains are coming through Oakland?
Date: Friday, October 02, 2015 12:49:39 PM
Attachments: [Post-Hearing #8 Coal Trains Already in Oakland.docx](#)

Dear Ms. Cappio,

I am attaching my response to Question 8 posed by you in your September 28, 2015 memo to Interested Parties regarding follow-up questions on Coal's Public Health and/or safety impacts.

Question #8 – How much coal currently goes through the Port of Oakland on its way to the Richmond Port (or elsewhere)?

Answer: Coal trains do not come through the Port of Oakland. Two coal trains were seen passing through the Union Pacific right-of-way in the Port of Oakland in a twelve month period, but UP states that this is an anomaly.

I am copying Andy Perez of Union Pacific whom I spoke to and mention in the attached response so he can confirm my statements if he wishes to do so.

lora.jo.foo
Oakland, CA
510-282-9454

RESPONSE TO QUESTION # 8

From Lora Jo Foo, Oakland, CA
October 2, 2015

I am writing in response to Question 8 posed by Claudia Cappio, Assistant City Administrator in her September 28, 2015 memo to Interested Parties regarding follow-up questions on Coal's Public Health and/or safety impacts.

Question #8 – How much coal currently goes through the Port of Oakland on its way to the Richmond Port (or elsewhere)?

Answer: Coal trains do not come through the Port of Oakland. Two coal trains were seen passing through the Union Pacific right-of-way in the Port of Oakland in a twelve month period, but UP states that this is an anomaly.

COAL TRAINS DO NOT COME THROUGH OAKLAND

I have previously spoken to Ms. Cappio who has for months claimed that coal trains are already going through the Port of Oakland. In her Agenda Report to the City Council dated September 10, 2015 for the September 21, 2015 Public Hearing on coal, she states:

Since the Resolution [opposing transport of fossil fuels] was adopted in June 2014, among other things, the City has conducted outreach to the railroads and the Port of Oakland to address the existing transport of coal through Oakland. Further, in light of existing coal shipments which are transported through Oakland, and existing constraints related to the development at the Oakland Army Base, City staff continues to seek ways to understand and address health and/or safety concerns from the transport of coal through Oakland. [Emphasis added]

On September 17, I spoke by phone with Ms. Cappio and asked her the basis for her claim about “existing coal shipments” through Oakland. She responded that since July or earlier there has been two sightings of coal trains on Union Pacific right of way through the Port of Oakland. In addition to the July or earlier sighting, she said the second sighting she learned about from people who sent her photos in the first week of September of a 100 car long open top coal train going through the Port. She didn't know how frequently this occurs. Other than the two sightings, she didn't know of any other trains coming through Oakland on UP tracks. I told her that I've communicated with two Port staff (Daria Edgerly and Michael Zampa) who in the last 12 months have never seen coal trains coming through on UP lines. Yet despite only two sightings over several months, Ms. Cappio implies in her Agenda Report that coal trains are already coming through Oakland on a regular basis.

On September 15, I spoke by phone to Daria Edgerly, an employee of the Port of Oakland (510-627-1337,) who stated that over the past 12 months, she has never seen coal trains coming through the Port. Ms. Edgerly works at the Port and also lives in Jack London Square.

In response to my email message to the Port of Oakland, on September 15, Michael Zampa responded as follows:

Hi. I am the communications director for the Port of Oakland. Chris Peterson asked me to contact you. Saw your questions about coal on the rails in Oakland. Afraid we don't have answers for you. The Union Pacific controls the tracks you talked about. While no coal at all is shipped from or to the Port of Oakland, can't be sure about coal trains passing on the UP tracks. As I understand it, coal is shipped from the port of Richmond. But as you know, there are absolutely no coal shipments from the Port of Oakland. [Emphasis added].

In response to my follow-up question whether in the past 12 months he's seen coal trains coming through UP tracks, Mr. Zampa who works at the Port replied, "Never saw a coal train."

On September 16, I sent an email message to Andy Perez, Director of Port Affairs for Union Pacific, asking him these questions: 1) Are coal trains coming through Oakland on UP lines at the Port of Oakland? 2) If yes, what are their points of origin and destination? 3) If yes, how often will these trains be coming through this route?

On September 17, Mr. Perez responded by phone and told me that historically, coal has been transported through Oakland but not for at least a decade. He stated that there is no coal coming through Oakland now. Regarding the early September sighting, he said the 100 car coal train was mistakenly sent to Oakland and once Union Pacific learned of it, it was immediately moved to Richmond. He said this coal train going through Oakland was an anomaly. He has not heard of a coal train going through Oakland in July or earlier. Mr. Perez can be reached at 562-235-5859 or aperez4@up.com.

My email correspondence with the Port and Union Pacific are below.

It is unfortunate that based on two sightings of coal trains on Union Pacific tracks in the Port and without further investigation, Ms. Cappio not only states in her September 10, 2015 Agenda Report "in light of existing coal shipments" but also continues to keep this misinformation alive by asking in her September 28 Follow-up Questions memo the question: "How much coal currently goes through the Port of Oakland on its way to the Richmond Port (or elsewhere)?"

I am troubled by a phone conversation on September 16 that I had with John Monetta, who I am told is the City's Real Estate Manager for Oakland Global. In response to my question about alleged coal trains already coming through Oakland, Mr. Monetta stated he thought coal trains come 3 - 4 times a month through Oakland on the Union Pacific line and that coal from one of those trains was loaded on containers and shipped to Asia through the Port of Oakland. I found his statements astounding. Because I was concerned over the spread of false information, I decided to call Ms. Cappio myself and had the above conversation on September 17 with her where I learn the basis of her allegations are just two incidents this year.

Clearly, no coal trains are going through Oakland on a regular basis and the two sighted this year are an anomaly.

Regarding Question #9, since no coal trains come through Oakland except twice by mistake, there is no reason to take business away from the Richmond facility and give it to the proposed "state-of-the-art" Oakland facility.

EMAIL CORRESPONDENCE ON ALLEGED COAL TRANSPORT THROUGH OAKLAND

From: **Michael Zampa** <mzampa@portoakland.com>
Date: Tue, Sep 15, 2015 at 6:31 PM
Subject: Re: Coal
To: lora jo foo ljfoo70@gmail.com

Never saw a coal train. Will try to find a contact tomorrow

Sent from my iPhone

From: **lora jo foo** <ljfoo70@gmail.com>
Date: Tue, Sep 15, 2015 at 5:52 PM
Subject: Re: Coal
To: Michael Zampa <mzampa@portoakland.com>

Michael,

Thanks for the quick response. I'm assuming you work at the Port. Have you seen coal trains on UP tracks in the past 12 months? How many times? And do you have any idea why they are there? Even a guess might help us with this mystery. Finally, who would I speak to at UP? Do you have a name and contact info?

lora jo

lora jo foo
[510-282-9454](tel:510-282-9454)

From: **Michael Zampa** <mzampa@portoakland.com>
Date: Tue, Sep 15, 2015 at 5:43 PM
Subject: Coal
To: "ljfoo70@gmail.com" <ljfoo70@gmail.com>

Hi. I am the communications director for the Port of Oakland. Chris Peterson asked me to contact you. Saw your questions about coal on the rails in Oakland. Afraid we don't have answers for you. The Union Pacific controls the tracks you talked about. While no coal at all is shipped from or to the Port of Oakland, can't be sure about coal trains passing on the UP tracks. As I understand it, coal is shipped from the port of Richmond. But as you know, there are absolutely no coal shipments from the Port of Oakland.
Sent from my iPhone

From: **lora jo foo** <ljfoo70@gmail.com>

Date: Tue, Sep 15, 2015 at 4:59 PM

Subject: Coal trains at Port of Oakland

To: cpeterson@portoakland.com

Dear Chris,

I left a voice message and thought I'd email also. I am with the No Coal in Oakland coalition. As you may know, the Oakland City Council is holding a public hearing about coal exports on Sept 21. One persistent rumor has been circulating that coal already is transported through Oakland because a coal train car was seen at the Port a few months back. It has since been clarified that the coal train was sitting on Union Pacific property within the Port and coal trains do not regularly come on UP lines to Oakland. However the rumor persists. Even Mayor Schaaf has repeated this rumor. Do you know how often in the past 12 months coal trains have come through UP property? Do you know why there was one sitting on UP tracks in July? Can you speak on what you know at the Sept. 21 hearing. I can be reached at [510-282-9454](tel:510-282-9454). And I'll try calling you again tomorrow.

Sincerely,

lora jo

From: [Cappio, Claudia](#)
To: [Wald, Mark \(MWald@oaklandcityattorney.org\)](#); [Monetta, John](#)
Cc: [Cole, Doug](#)
Subject: FW: Critiquing HDR
Date: Tuesday, September 29, 2015 1:54:27 PM
Attachments: [Ostro comments on HDR Engineerin report for the CCIG-ljf.docx](#)

Hi All – FYI -- C

From: lora jo foo [mailto:ljfoo70@gmail.com]
Sent: Tuesday, September 29, 2015 1:31 PM
To: Bart Ostro; Cappio, Claudia
Cc: Ted Franklin; Margaret Rossoff margaretmft@gmail.com
Subject: Re: Critiquing HDR

Bart,

Thanks for the great job on your critique. I made minor changes in track changes. Caught some typos, etc. Can you wait until Ted returns Thursday to review before sending off? I asked Margaret Rossoff to review also. She's with our No Coal in Oakland coalition. When you are ready to send to the city, please email to Doug Cole at dcole@oaklandnet.com "Cappio, Claudia" <ccappio@oaklandnet.com> and copy the city council members. I'll get you their email addresses.

lora jo

P.S. Claudio Cappio who is the Assistant City Administrator sent out a list of questions to help her write her recommendation to the city council regarding whether there are health and safety impacts to coal. I'll forward to you in case you are not on her list and you want to answer any of her questions.

lora jo foo
[510-282-9454](tel:510-282-9454)

On Mon, Sep 28, 2015 at 4:15 PM, <bostro@pacbell.net> wrote:
Here's my critique for the admin record. Please acknowledge receipt and let me know of any comments/corrections you might have.

Thanks, Bart

From: lora jo foo <ljfoo70@gmail.com>
To: Bart Ostro <bostro@pacbell.net>
Cc: Ted Franklin <ted@tedfranklin.net>
Sent: Friday, September 25, 2015 12:16 PM
Subject: Critiquing HDR

Hi Bart,

Our allies on the City Council asked for critiques of the developer's Health and Safety Assessment, attached. Wondering if you can draft a critique to include in the administrative record? And we will forward it to the counselpersons asking for more critique.

lora j

lora jo foo
[510-282-9454](tel:510-282-9454)

Comments of Dr. Bart Ostro. Former Chief of the Air Pollution Epidemiology Section, California Environmental Protection Agency (retired). Dr. Ostro was responsible for helping to develop the air pollution standards for fine particles (PM2.5) for California, the U.S. EPA and the World Health Organization and is the author of over 100 peer reviewed publications on the health effects of air pollution and heat waves.

RE: Comments on: Oakland Bulk and Oversized Terminal Air Quality & Human Health and Safety Assessment of Potential Coal Dust Emissions, prepared for: California Capital and Investment Group, HDR Engineering, September 2015

1. Page 5 the consultants state there will be little erosion of coal. However, their citation refers to field testing of dust from coal piles, **NOT** from moving trains which will likely produce a distinctly different level of emissions. In addition, the erosion potential will be impacted at the West Oakland location due to the winds that are often experienced there. For example, wind analysis from the Bay Area Air Quality Management District shows that 100% of the winds in the summertime, when people spend the greatest amount of time outdoors, are from the West. This means that dust from the rail operations, including the train hauling itself, will blow directly into Oakland residential areas, particularly West Oakland. In the winter time, still about 70% of the time, the wind is from the West. In addition, the data indicate that many days have wind speed above 10 mph. (Eric Fujita and Campbell, West Oakland Monitoring Report, DRI, 2010). Furthermore, actual empirical evidence of fine particle concentrations at the delivery site (**NOT** at the mines which the contractors state is the only place that will be impacted by erosion) shows **significant increase in concentrations due to coal trains**. This issue is discussed in point 5d below.

2. Page 5. CCIG consultants state: “moving rail cars would emit negligible quantities of coal dust in the Oakland area because of load profiling and topping measures.” To support this statement they refer to the lack of erosion (again suggesting incorrectly that all erosion will occur near the mines), discussed above, and to tests that shows an 85% reduction in coal dust from the control strategies undertaken. Several points here: (1) The 85% reduction is based on field tests and trials conducted by BNSF and Union Pacific in limited circumstances. It is not based on real world practices or data; (2) the surface sprays used to cover the coal tend to degrade over time and for the new marine terminal at the former Oakland Army Base we are talking about an 800

mile trip from Utah. In the Powder River coal transport to the West Coast, the train company needed to add an additional surface spray facility along the route from Montana. It is not clear if an added facility is planned in this case and it is not mentioned in the consultant report; (3) there is no mandate for this control, and compliance, especially over time, is questionable; and (4) even after an 85% reduction, there would still be significant increases in fine particulate air pollution for Oakland residents. Representatives from BNSF indicated that there would be an average erosion of 1.6 lbs of coal dust per car per mile. Using simple assumptions, a daily train of 115 cars for a year, for the 12 miles that the train would pass through Oakland would result in a deposition of

$1.6 \text{ lbs/car-mile} \times 365 \text{ days} \times 115 \text{ cars} \times 12 \text{ miles} \times 2000 \text{ (pounds in a ton)} = 400 \text{ tons a year of coal dust deposited in Oakland annually}$

and 100 tons a year in West Oakland. Even with 85% control, if it actually occurs, this would still leave 60 tons of coal dust a year in Oakland and approximately 15 tons per year in West Oakland. **Hardly a “negligible” amount.**

3. Page 6. The consultants add, almost as an aside, that the trains will also be covered. However, there is no detail on this and to our knowledge no existing practice where this is currently employed, and certainly no regulatory mandate for it. Again, **compliance is an issue** since this would add costs to the train operation and is currently not actively used. We contacted two companies (CoalCap and Rush-Co) that are now developing prototypes of covered cars. They have only been tested on a limited basis and are still engaged in development. It is unclear when, if ever, these would be available commercially.

4. Page 11. The CCIG consultants make a statement in section IV that the transport operations will not harm public health. They state that “Coal and coal dust in itself is not specifically regulated or defined as a hazardous material by USEPA.” While this is true, some of the coal dust will be a fine particulate which is subject to federal and state outdoor air pollution standards that are discussed below.

5a. **WHY are fine particles important?** Airborne fine particles are often called PM2.5; these are particles that are 2.5 microns or less in diameter. By contrast, a human hair is approximately 70 microns. PM2.5 from coal dust are important since it can be inhaled deep in the lungs. Studies from epidemiologists and cardiologists have demonstrated in peer reviewed journals that there is **a clear causal relationship between both very short (a day or multiple days) and longer-term (several months to years) exposure to PM 2.5 and a wide range of adverse health outcomes** (Brook et al 2010). Studies from around the world and from California demonstrate that PM2.5 is associated with respiratory symptoms, school and work loss, asthma exacerbation, emergency room visits, non-fatal heart attacks, adverse birth outcomes (premature births, low birth weight), hospital admissions, and death from cardiovascular disease. The populations at greatest particular risk (though other groups are susceptible) include children, asthmatics and older individuals with pre-existing cardiovascular or respiratory disease. In California, these peer reviewed studies showing some of these health effects include those by Ostro et al. 2006, 2009; Malig and Ostro (2009), Green et al. (2009) and Malig et al. (2013).

5b. PM2.5 has been determined by the World Health Organization (WHO) to have the greatest worldwide impacts of any environmental exposure with an **estimated 3 million deaths per year**. (Lim et al, 2012). The California Air Resources Board estimates for California range from 10 to 30 thousand per year depending on the assumptions in the analysis and the air standard used.

5c. While specific outdoor air standards have been established for PM2.5, institutions including California EPA, USEPA and WHO have specified **there is no clear cut safe level** for these effects. This means that every exposure adds to the likelihood of an adverse health outcome. Thus, even in areas where the standard is being attained, additional exposure to coal dust is likely to impact health, especially in a susceptible population.

5d. In **one of the few actual studies** conducted on this issue, scientists at the University of Washington examined the contribution to PM2.5 from coal versus freight trains, close to the destination site (i.e., **NOT close to the mines**) (Jaffe et al., 2014; 2015). In their peer reviewed publication, they reported that the average peak in near-by concentrations of PM2.5 of coal trains were twice that of freight, specifically 21 versus 11 micrograms per cubic meter. In addition, they reported several events with concentrations greater than 75 micrograms with concentrations

up to 230 micrograms. **Thus, one would logically expect very high peaks of PM2.5 from coal dust, at concentrations that could cause health effects.**

6. Page 11, Section A. The CCIG consultants report the results of a coal dust study conducted by the Surface Transportation Board (STB) regarding a proposed rail line in Montana (also known as the Tongue River Rail Project). Based on a modeling exercise they report that incremental concentrations of airborne coal dust from train cars are expected to be below the standards set in the National Ambient Air Quality Standards (NAAQS) and the Montana Ambient Air Quality Standards (Montana AAQS) to protect human health. I believe they wish the reader to infer that therefore, the proposed project in Oakland will also not impact public health. However, there are **major differences** between these two sites. Based on the latest available information, the two major towns in rural Montana, Colstrip and Ashland, that are impacted by the railroad have populations of 2200 and 400, respectively. There is obviously very little urban residential activity to produce pollution in this area such as traffic, restaurant cooking, and biomass burning. In fact, based on a letter from the governor of Montana, the annual average concentrations of fine particles in Rosebud and Powder River Counties, the two counties immediately impacted by the railroad are 5.5 and 6.7 micrograms per cubic meter (the latter is the standard method for measuring fine particles concentrations). (Letter from Steve Bullock, Governor to Shaun McGrath, Regional Administrator, USEPA, "Montana 2012 Revised Annual PM2.5 NAAQS Initial Designation," Dec 2, 2013). This is a very low concentration, but not unexpected for this very rural area. In addition, the STB report says nothing about impacted communities at the final delivery point.

In contrast, obviously Oakland is part of a major metropolitan area with multiple sources of fine particulate pollution. Air pollution measurements have been taken in West Oakland by the Desert Research Institute, a firm known internationally for its work on measuring exposures. Their analysis indicates that, based on sampling conducted at several residential sites in the West Oakland community, the annual averages of PM2.5 were above 11 micrograms per cubic meter (Fujita and Campbell, West Oakland Monitoring Report to the BAAQMD, DRI, 2010). Another monitoring study showed concentrations in West Oakland of 15 to 40 micrograms per cubic meter (Bui et al. Ground Level Monitoring of Particulate Matter in West Oakland). **Thus, the**

current levels of PM2.5 in West Oakland are roughly twice that of the Montana train site used by the consultants. As such, the expected contribution of coal dust would most likely put them in **violation of both the state and federal averages** of 12 micrograms per cubic meter. In addition, as explained earlier, there is a possibility that they would exceed the 24-hour standard for PM2.5. It is also important to note that West Oakland is heavily impacted by diesel particles, which are very small particles. Several studies have shown that these particles (which are similar to the coal dust particles) are up to 10 times more toxic than generic PM2.5 (Ostro et al., 2014).

Conclusion Based on the above information, coupled with the lack of a recognized safe level for exposure to PM2.5, it is naive and reckless to state that the public health will not be impacted by the coal-bearing trains. Further it is inappropriate to use the study in Montana to infer the consequences of coal transport in the Oakland corridor. Finally, comments from the Environmental Impact Statement for the Montana project suggest that only 30 percent of shippers comply with the rule to properly spray and control dust. (Online Public Meeting for the Draft EIS for the Proposed Tongue River Railroad, June 17, 2015). Based on all available information, empirical data from Washington State, and a common sense approach to the issue, it is very likely that the proposed coal trains would significantly impact the health of residents of West Oakland and Oakland, in general.

References

- Brook et al. (2010) *Circulation* 121:2331-78
- Green et al. (2009) *Environmental Health Perspectives* 117: 1939-44.
- Jaffe et al. (2014) *Atmospheric Pollution Research* 5:344-351.
- Lim et al. (2012) *Lancet* 380: 2224–2260.
- Malig and Ostro (2009) *Occupational and Environmental Medicine* **66**:832-839.
- Malig et al. (2013) *American Journal of Epidemiology* 178:58-69.
- Ostro et al. (2006) *Environmental Health Perspectives* 114: 29–33.
- Ostro et al. (2009) *Environmental Health Perspectives* 117:475-480.
- Ostro et al. (2014) *Occupational and Environmental Medicine* 72:123-9.