PORT OF OAKLAND
BOARD OF PORT COMMISSIONERS
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AGENDA

Meeting of the Board of Port Commissioners
February 27, 2014 – 1:00 p.m.
Board Room – 2nd Floor

ROLL CALL

Commissioner Colbruno, Commissioner Head, Commissioner Parker, Commissioner Uno, 2nd Vice-President Hamlin, 1st Vice President Yee and President Butner.

1. CLOSED SESSION

Closed Session discussions and materials may not be disclosed to a person not entitled to receive it, unless the Board authorizes disclosure of that confidential information.

1.1 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Pursuant to Paragraph (1) of Subdivision (d) of California Code Section 54956.9):

CMC Food Services LLC and NNF Grewal, Inc., v. Port of Oakland, et al.; Alameda County Superior Court Case No.: RG13685134

1.2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Significant Exposure to Litigation Pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9 2 matters

1.3 CONFERENCE WITH REAL PROPERTY NEGOTIATORS – (Pursuant to California Government Code Section 54956.8):

Property: Oakland Army Base
Negotiating Parties: Port of Oakland and Various Parties
Agency Negotiator: Director of Maritime, John Driscoll
Under Negotiation: Price and Terms of Tenancy
Property: Howard Terminal/Berths 67-68  
Negotiating Parties: Port of Oakland and Various Parties  
Agency Negotiator: Director of Maritime, John Driscoll  
Under Negotiation: Price and Terms of Tenancy

1.4 PUBLIC EMPLOYEE PERFORMANCE EVALUATION – (Pursuant to California Government Code Section 54957)

Title: Port Attorney

ROLL CALL/OPEN SESSION (Approximately 3:30 p.m.)

Commissioner Colbruno, Commissioner Head, Commissioner Parker, Commissioner Uno, 2nd Vice-President Hamlin, 1st Vice President Yee and President Butner.

CLOSED SESSION REPORT

The Port Attorney or Board Secretary will report on any final actions taken in Closed Session.

2. CONSENT ITEMS

Action by the Board under “Consent Items” means that all matters listed below have been summarized and will be adopted by one motion and appropriate vote. Consent Items may be removed for further discussion by the Board at the request of any member of the Board.

2.1 Ordinance: Approval Of A Short Term Rental Agreement With The University Of California At Berkeley For A Greenhouse Gas Air Monitor On The Roof Of 530 Water Street (Environmental)

2.2 Resolution: Resolution Consenting To Short-Term Sublease By DTG Operations, Inc. To Enterprise Rent-A-Car Company Of San Francisco (Aviation)

2.3 Ordinance No. 4278, 2nd Read Of An Ordinance Approving Terms And Conditions Of And Authorizing Approval And Execution Of A License And Concession Agreement With Transfer Case Express, Inc. For The Premises Located At 1285 Embarcadero Road At A Monthly Rental Rate Of $3,500.00.

2.4 Ordinance No. 4279, 2nd Read Of An Ordinance Approving Terms And Conditions Of And Authorizing Approval And Execution Of A License And Concession Agreement With Hadal, Inc. For The Premises Located At 1363 Embarcadero Road At A Monthly Rental Rate Of $9,560.74.

2.5 Ordinance No. 4280, 2nd Read Of An Ordinance Amending Port Ordinance 2613 And Approving The Modification To The Air Service Parking Promotion Program.
2.6 **Report:** Quarterly Report Of Construction Change Orders For 2nd Quarter FY 13/14 (Engineering)

3. **MAJOR PROJECTS**

    *This segment of the meeting is reserved for action and discussions regarding the status of Major Projects and issues of special importance.*

4. **BUDGET & FINANCE**

    *This segment of the meeting is reserved for action or discussion regarding the status of Budget and Finance issues.*

4.1 **Report:** Unaudited Financials For 6 Months Ended December 31, 2013 Including Capital Expenditure Report

5. **STRATEGY & POLICY**

    *This segment of the meeting is reserved for action or discussion on Strategy and Policy Issues.*

5.1 **Report:** Maritime Air Quality Improvement Plan (Maqip) Progress Report (Environmental)

6. **REMAINING ACTION ITEMS**

    *Remaining Action Items are items not previously addressed in this Agenda that may require staff presentation and/or discussion and information prior to action by the Board.*

6.1 **Ordinance:** Approval Of An Amendment To The Waterfront Hotel Lease To Include The Premises Located At 489 Water Street, Oakland (CRE)

6.2 **Resolution:** Budget Authorization To Rehabilitate The Ground Transportation Parking Lot, North Field, OAK, $300,000 (Aviation)

6.3 **Resolution:** Authorizations Relating To Demolition Of Unused North Field Airport Traffic Control Tower, Oakland International Airport (Aviation)

6.4 **Resolution:** Resolution Adopting A Labor Peace Agreement Policy For Airport Concession Tenancy Agreements (Aviation)

6.5 **Resolution:** Rejection Of All Proposals Received In Response To Request For Proposals (RFP) No. 13-14/06 For Lease Of The Charles P. Howard Terminal (Berths 67-68) (Maritime)
7. UPDATES/ANNOUNCEMENTS

The President, Members of the Board and the Executive Director will report on noteworthy events occurring since the last Board Meeting.

8. SCHEDULING

This segment of the meeting is reserved for scheduling items for future Agendas and/or scheduling Special Meetings

OPEN FORUM

The Board will receive public comment on non-agenda items during this time. Please fill out a speaker card and present it to the Secretary of the Board.

ADJOURNMENT

The next Regular Meeting of the Board will be held on March 13, 2014.
SUPPLEMENTAL AGENDA REPORT

TITLE: Rejection of All Proposals Received In Response to Request for Proposals (RFP) No. 13-14/06 for Lease of the Charles P. Howard Terminal (Berths 67-68)

AMOUNT: Not applicable

PARTIES INVOLVED:

<table>
<thead>
<tr>
<th>Corporate Name/Principal</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bowie Resource Partners, LLC</td>
<td>Louisville, KY</td>
</tr>
<tr>
<td>California Capital Group/Kinder Morgan/MetroPorts</td>
<td>Oakland, CA</td>
</tr>
<tr>
<td>Schnitzer Steel Industries, Inc.</td>
<td>Oakland, CA</td>
</tr>
</tbody>
</table>

TYPE OF ACTION: Resolution

SUBMITTED BY: John C. Driscoll, Maritime Director

APPROVED BY: J. Christopher Lytle, Executive Director

SUMMARY

On October 7, 2013, Port staff issued Request for Proposals (RFP) No. 13-14/06 for lease of the Charles P. Howard Terminal (Berths 67-68). The Port received three proposals in response to the RFP. After reviewing and analyzing all the proposals received, staff recommends rejection of all proposals.

FACTUAL BACKGROUND

On September 26, 2013, Port staff presented an informational report to the Board of Port Commissioners (Board), recommending the issuance of an RFP for maritime uses at Charles P. Howard Terminal (Berths 67-68; the “property”). The RFP solicited broadly for any maritime use, as described in the September 2013 informational report, attached here as Exhibit A.

On October 7, 2013, the Port issued RFP No. 13-14/06 for lease of the property; the response period was 60 days. The RFP was disseminated in a variety of ways:

- Port website
- Advertisement in the Oakland Tribune
- Advertisement in 3 trade journals and/or affiliated websites (Journal of Commerce, American Journal of Transportation, and American Association of Port Authorities)
- Directly e-mailed to 54 seaport customers and maritime industry contacts
- Verbal communication with known interested parties or in response to inquiries about available property within the seaport
During the response period, seven companies attended the pre-proposal meeting held on October 18, 2013, 21 companies downloaded the RFP from the Port website, and three companies visited the data room to review documents made available for proposers to perform due diligence.

The RFP required respondents to address the following topics:

1. Company Information  
2. Knowledge and Experience  
3. Land Area Intended for Use/Occupancy  
4. Term of Occupancy  
5. Intended Use  
6. Improvements  
7. Rent  
8. Financial Capacity  
9. Additional Information  

Item 5 included a request for detailed information on proposed measures or methods to minimize or avoid emissions of air pollutants, including but not limited to greenhouse gases, and other measures to maintain and enhance environmental performance. Item 9 provided proposers an opportunity to present any information the proposer believed was necessary to more fully describe the intended use and occupancy of the property but not otherwise covered in Items 1-8.

On the deadline of December 6, 2013, the Port received three proposals in response to the RFP. On December 27, 2013, Port staff transmitted a request for additional information to each of the proposers, with a submittal deadline from proposers of January 8, 2013. The purpose of the request was to clarify or address missing items in the proposals. The requests for supplemental information were tailored to each proposal and included items such as clarification of team members, current project references, measures to enhance environmental performance, experience with CEQA review, and proposed rent. Staff received supplemental information from two of the three proposers on or before the deadline.

ANALYSIS

Discussion of Proposals Received

The three proposals received were from the following entities:

- Bowie Resource Partners, LLC
- California Capital Group/Kinder Morgan/Metro Ports
- Schnitzer Steel Industries, Inc.

**Bowie Resource Partners, LLC (“Bowie”)**

Bowie proposes a bulk operation on the entire 50-acre property, to handle borax, petroleum coke, coal, and iron ore pellets and fines. These materials would be brought into the Howard Terminal by rail and handled on-site through a system of conveyors and storage domes (150 feet high x 190 feet diameter), for ultimate loading onto ships for
export. This proposal provides for a minimum annual rent at commencement of the lease, along with increases in minimum rent and participation rent based upon volume, over the proposed 30-year lease term for the site (with one 30-year option).

Upon review and analysis of the Bowie proposal, staff believes that Bowie’s proposed use and operation of the property raises environmental concerns related to the handling of commodities such as coal. Environmental concerns about handling commodities such as coal stem primarily from issues of fugitive dust and climate change. Port staff believes that operations such as those proposed by Bowie conflict with recently adopted Port policies and programs intended to create or support environmental sustainability, in particular:

- In 2009, the Port adopted the Maritime Air Quality Improvement Program (MAQIP), which aims to significantly reduce air pollutant emissions, and the associated health risk, from Port seaport operations. While the MAQIP focuses on diesel particulate matter, emissions of other pollutants such as greenhouse gases are also considered in the Port’s air quality improvement efforts. The Port has received strong positive support and recognition from legislative, regulatory, and community organizations for its efforts in this area, through the implementation of initiatives such as the Comprehensive Truck Management and Shore Power Programs. The Port and its business partners have collectively spent hundreds of millions of dollars supporting the MAQIP goals. As a result of these and related efforts, in collaboration with all our stakeholders, the Port has seen an approximate 70% reduction in the amount of diesel particulate matter emissions and significant reductions in other air pollutant emissions since 2005 (baseline year).

- In 2010, the Port adopted a 5-year Strategic Plan, which sets forth a Guiding Principle of environmental stewardship for all Port activities, and a Strategic Goal of sustaining healthy communities through leading edge environmental stewardship. The adoption of this Guiding Principle and Strategic Goal was intended to further cement the Port’s policy priorities with respect to environmental performance.

Additionally, the State of California has adopted a climate change policy that supports reductions in global greenhouse gas emissions, such as those produced by coal-fired plants. Although this policy applies only to California, it has become a vehicle for certain groups to oppose activities that promote greenhouse gas emissions. Controversy and litigation over coal and coal export facilities and the impacts along the entire supply chain has been significant in recent years throughout the U.S., including on the West Coast. Current (active) coal and petroleum coke terminals in California are located at the Ports of Long Beach, Benicia, and Stockton. A terminal at the Port of Los Angeles is no longer operational; the Port understands this was due primarily to changes in commodity market demand.

The proposed use also raises some potentially significant operational concerns about rail capacity, blockage of traffic along certain streets, and interference with other seaport
operations, due to a large number of rail car transfers between the property and near-
dock railyard(s).

Staff does not believe that the Bowie proposal warrants long term leasing discussion in response to this RFP due to the practical difficulties posed by the above-stated potential conflicts with Port environmental policies and the stakeholder/community concerns that the proposed use is likely to present for the Port.

California Capital Group/Kinder Morgan/Metro Ports (“CCIG”)  
The CCIG proposal is also for bulk/commodity operations on the entire 50-acre property, but the type of commodities and details of the proposed operation are not specified. Based on other operations of team members elsewhere in the U.S., staff infers that commodities similar to those proposed by Bowie Resource Partners may be handled under this proposal, but this was not confirmed through the request for supplemental information (CCIG did not submit such information). No specific rental amount was included in the response.

Staff believes that the CCIG proposal does not provide sufficient information for staff to evaluate the uses proposed, the operations proposed, or the rent to be received by the Port. Therefore, staff believes that this proposal does not warrant further review in response to this RFP.

Schnitzer Steel Industries (“Schnitzer”)  
Schnitzer currently operates a metal recycling facility on private property adjacent to Howard Terminal. Schnitzer proposes relocating their current maintenance facility to a 3-acre portion of the property to improve operational efficiencies. They propose rent consistent with the existing Port Tariff 2-A rates applicable to the property, and request a term of 25 years.

The Schnitzer proposal is for only 3 acres of the total 50-acre site, which represents only about 6% of the property. While the proposal identifies a rental payment to the Port consistent with Port Tariff rates, staff believes that due to the small portion of the site proposed to be utilized, this proposal does not warrant long term leasing discussions in response to this RFP.

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**Supplemental Information**

At the Board meeting of February 13, 2014, the Board received public comment from two of the proposers, who both requested an opportunity to provide staff with additional information regarding their proposals. The Board directed staff to meet with all three proposers to gather such additional information and to contact key stakeholders, including local community groups, to solicit feedback on the matter before the Board for consideration. Staff met with Bowie and Schnitzer on February 19, 2014, and has scheduled a meeting with CCIG on February 25, 2014 (the earliest date CCIG was available to meet). Staff has also contacted key community representatives from the Jack London District, co-chairs of the Port Maritime Air Quality
Improvement Plan Task Force, and Waterfront Action. Additionally, following a Public Records Act Request, staff has scheduled a meeting on February 21, 2014 with the Sierra Club, and other environmental organizations, at their request.

Staff has reviewed and analyzed the information provided by Bowie and Schnitzer during the meetings of February 13, 2014.

**Bowie**

Bowie provided a thorough explanation of its proposed operations at the Howard Terminal, including methods to minimize dust emissions on and off the property. In particular, as a modification to their original proposal, Bowie discussed its intent to pursue the use of covered rail cars for transport of material from the point of origin to the property. While the meeting with Bowie was very informative, staff believes the information received does not alter the previous conclusion reached by staff.

Attachment B to this Report (which also includes California Assembly Joint Resolution No. 35 "Relative to Exportation of Coal") presents staff’s analysis of environmental concerns associated with the handling of commodities such as coal. Local community stakeholders contacted to date have expressed concern with establishing coal operations at the property for environmental and health reasons.

In sum, Bowie’s proposal continues to raise concerns about air quality, greenhouse gas emissions and related issues of climate change and associated sea level rise, and about the high likelihood of a protracted and lengthy entitlement, environmental review, and permitting process if a use such as proposed by Bowie were to be pursued for the property. Furthermore, pursuit of such a proposal for this property is likely to generate significant local opposition from community stakeholders and environmental groups in the vicinity of the property. Since the Port would be the lead agency for review under the California Environmental Quality Act (CEQA) for the property, this opposition may expose the Port to potential litigation, in addition to a lengthy permit/entitlement process. For these reasons, commencement of operations on the property could be significantly delayed.

**Schnitzer**

While the meeting with Schnitzer did not yield new information, Schnitzer further explained its intended use of property, including the potential reconfiguration of operations at its current (privately owned) facility that could be accomplished with a long term lease of a 3-acre portion of the Port’s property. Schnitzer also expressed some flexibility about the location of the acreage and the lease term proposed, although reiterated the desire for a long term lease to justify the capital improvements to their current facility. Staff continues to believe that entering into a long term lease of a 3-acre portion of the property at this time is not advantageous to the Port.

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1 Co-Chairs: GSC Logistics, West Oakland Environmental Indicators Project, Bay Area Air Quality Management District, Port of Oakland.
CCIG
CCIG is not available to meet until February 25, 2014; therefore, staff will provide a verbal update on this meeting at the Board meeting of February 27. While CCIG’s proposal did not identify the types of commodities it proposes to handle at the property, to the extent coal is one such commodity, staff directs the reader to Attachment B of this Report.

In conclusion, based on Port staff’s review and analysis of the proposals received, and of the information provided by the proposers in follow-up meetings as of the publication date of this Report, none of the proposals received appears to be suitable for commencing negotiations for lease of the property. Therefore, staff recommends rejection of all proposals received in response to the subject RFP.

Staff will continue to pursue short to medium-term or “interim” uses of the property in order to generate revenue, while continuing to consider options for long-term use of the property.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goal and objective of the Port’s Strategic Plan:

<table>
<thead>
<tr>
<th>STRATEGIC PRIORITY AREAS</th>
<th>GOAL</th>
<th>OBJECTIVE</th>
<th>HOW THIS PROJECT IMPLEMENTS + WHEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sustainable Economic and Business Development</td>
<td>Create sustainable economic growth for the Port and beyond.</td>
<td>1. Increase revenue, job creation and small business growth.</td>
<td>The proposed rejection of all proposals received promotes the Port’s partnerships with regulatory and community organizations in support of Port economic growth, and allows the Port to continue seeking opportunities to generate revenue from Port property.</td>
</tr>
<tr>
<td>Stewardship and Accountability</td>
<td>G. Sustain Healthy Communities Through Leading Edge Environmental Stewardship</td>
<td>1. Ensure effective communication and education regarding environmental and safety standards with business partners and the community. 2. Partner to share risk, accountability, benefits and improve environmental and safety compliance.</td>
<td>The proposed rejection of all proposals received promotes the Port’s environmental initiatives, and allows the Port to continue seeking opportunities to generate revenue from Port property.</td>
</tr>
</tbody>
</table>
BUDGET & FINANCIAL IMPACT

Port staff budgeted $769,375,000 for revenue from the property in Fiscal Year (FY) 2013-14. This revenue may not be realized as a result of the proposed action. Given timing considerations and the results of the RFP, the budgeted revenue may not be realized even if staff were recommending entering into lease negotiations with one or more of the proposers.

STAFFING IMPACT

The proposed action will not have a staffing impact.

SUSTAINABILITY

The proposed action does not provide opportunities for sustainability.

ENVIRONMENTAL

The proposal to reject all proposals received in response to RFP No. 13-14/06 for lease of the Charles P. Howard terminal is not a project as defined by the California Environmental Quality Act (CEQA) and therefore is not subject to CEQA, and no environmental review is required (CEQA Guidelines Sections 15378 and 15060(c)(3)). Further, neither extension of the RFP response period nor negotiations with the proposers would result in a physical change in the environment, and therefore those options are not subject to CEQA (Section 15061(b)(3)). Any projects that may be proposed will undergo environmental review and will be brought to the Board for approval of CEQA findings.

MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters addressed under this action are not within the scope of the Port’s MAPLA and the provisions of the MAPLA do not apply to this action.

OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

The proposed action is not subject to the Port's OCIP.

GENERAL PLAN

The proposed action does not change the use of any existing facilities or create new facilities; therefore a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

LIVING WAGE

Living wage requirements, in accordance with the Port’s Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the “Living Wage Regulations”), do not apply because the proposed action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.
OPTIONS

Staff has identified the following options for the Board’s consideration:

1. Reject all proposals received in response to Request for Proposals No. 13-14/06 for lease of the Charles P. Howard Terminal (Berths 67-68); or
2. Direct staff to negotiate with one or more of the proposers who responded to Request for Proposals No. 13-14/06 for lease of the Charles P. Howard Terminal (Berths 67-68); or
3. Direct staff to extend the response period for Request for Proposals No. 13-14/06 to allow more time for potential interested parties to submit proposals

RECOMMENDATION

Staff recommends that the Board reject all proposals received in response to Request for Proposals No. 13-14/06 for lease of the Charles P. Howard Terminal (Berths 67-68).
BOARD MTG. DATE:  2/27/14

ATTACHMENT A

September 26, 2013 Informational Report re: Charles P. Howard Terminal
INFORMATIONAL REPORT

Request for Proposals – Howard Terminal (Berths 67-68)

September 26, 2013

The Maritime Division recommends the issuance of a Request for Proposals ("RFP") for maritime uses at Howard Terminal (Berths 67-68; the "property"). This recommendation is based on the following key reasons:

- Urgency of revenue
- Diversification of maritime activity at the seaport
- Entitlement and regulatory framework currently governing use of the property

This report outlines staff’s approach for the RFP and requests input from the Board of Port Commissioners ("Board"), including scope, timeline, and any other matters.

**Background**

Pursuant to the Settlement Agreement amongst SSAT\(^1\), SSAT Oakland, and the Port dated July 18, 2013 (the "Settlement Agreement") and the Termination Agreement between SSAT and the Port (the "Howard Termination Agreement") terminating SSAT’s NEPAA at Howard Terminal, SSAT is required to vacate Howard Terminal with the understanding that the Matson Navigation operations will move to the Berths 60-63 terminal. While originally anticipated to occur on October 1, 2013, this relocation may occur as late as January 2014.

Given the impending vacancy of Howard Terminal, there is urgency to maintain business and revenue continuity for the property. As such, staff proposes to issue an RFP for Howard Terminal as expeditiously as possible and to limit such solicitation to maritime-related uses of the property.

**Land Use Considerations**

Staff proposes the RFP be limited to maritime and maritime-related uses, as opposed to all potential uses, given the following considerations and constraints:

**Urgency of Revenue**

With the loss of about $10 million/year of revenue at Howard Terminal starting October 1, 2013, finding a new tenant that can quickly establish operations and pay rent to the Port is critical. Because the property is already generally permitted and entitled for maritime and maritime-related uses, maintaining land use consistency will help expedite occupancy. However, it should be noted that even some maritime uses may require additional entitlement work; for example, construction of extensive break bulk facilities may require some California Environmental Quality Act ("CEQA") analysis and permitting work. This work, however, is expected to be relatively limited as compared to non-maritime uses of the property.

\(^1\) The term “SSAT” in the Settlement Agreement refers to both SSA Terminals, LLC and SSA Terminals (Oakland), LLC. However, for purposes of this report, “SSAT” refers to SSA Terminals, LLC, and “SSAT Oakland” refers to SSA Terminals (Oakland), LLC.
Diversification of Maritime Activity
Howard Terminal provides an opportunity to diversify cargo type within the seaport. While the property may no longer be suitable for long-term container terminal operations due to the size, location, and other features of the property, it could be utilized for other maritime related uses such as break bulk, ro-ro autos/equipment, refrigerated cargo. These uses may yield revenue and/or indirect business benefits that the Port does not currently capture, which could help diversify the Port’s maritime business model as well as marginally reduce exposure to future risk from over-reliance upon container terminal operations alone.

BCDC Seaport Plan
Howard Terminal is included in the Bay Conservation and Development Commission (“BCDC”) Seaport Plan as a “Port Priority Use” area. This designation is based on a Bay-wide study performed by BCDC periodically to determine whether enough capacity exists across all Bay Area ports to accommodate anticipated cargo growth in the long-term future. Using Howard Terminal for non-maritime uses conflicts with this designation, and de-designation of lands from Port Priority Use requires a Seaport Plan amendment, which is a fairly lengthy and involved process. To pursue an amendment, the Port would be required to provide evidence that sufficient capacity exists within the remaining Port seaport properties, or elsewhere within the Bay Area Port priority lands, to support the long term maritime growth demands for the region. BCDC would then independently analyze that information before proceeding with an amendment.

Tidelands Trust Compliance
Howard Terminal is currently encumbered by the Tidelands Trust. Uses of the property are therefore generally limited to water oriented commerce, navigation, fisheries, and regional or state-wide recreational uses. Approval from the State Lands Commission would be required for any uses of the property that are not Tidelands Trust compliant. Many non-maritime activities are not considered Trust compliant uses and thus may require lengthy negotiations with the State Lands Commission, and potential legislation, before the Port could proceed with such non-Trust uses for the property.

Other Entitlement, Environmental & Regulatory Issues
Howard Terminal is subject to a complex set of regulatory permits and deed restrictions related to the hazardous materials in the soil and groundwater underlying the property. Development of new structures that penetrate the ground surface or changes in land use will require notices to regulatory agencies, and compliance with existing health, safety and soil management plans. Non-maritime uses will likely require extensive and expensive clean-up or other protective environmental measures, precluding expedient turn-over of the property to a new rent-paying tenant. Further, non-maritime uses will likely require numerous land use entitlements including local land use permits, an amendment to the Oakland General Plan, and CEQA review. These activities could take several years to complete.

Proposal Evaluation
In order to review and evaluate proposals as expeditiously and meaningfully as possible, the scope of the RFP must be well defined. Staff believes that the “maritime only use” category will allow for diverse proposals while ensuring a robust evaluation process. Broadening the RFP scope further would complicate the evaluation process.
RFP - Scope
Staff proposes to structure the RFP in a manner that allows for diverse responses within the confines of maritime and maritime-related uses. Key scope elements will include:

Permitted Uses: Maritime port uses, including, without limitation, the following: (i) container terminal; (ii) ro-ro auto and vehicle processing; (iii) ro-ro equipment; (iv) break-bulk; (v) refrigerated cargo & warehousing; (vi) lumber, steel and building materials; (vii) local dry bulk – aggregate, cement; (viii) other dry bulk industrial products; (ix) dry bulk agricultural & forest products; (x) marine construction and vessel services; and (xi) truck parking or chassis/empty container storage. Uses that have significant adverse impacts, including, but not limited to, operational impacts on maritime activities elsewhere in the seaport, as determined by the Port, will not be considered.

Term: To be determined by Proposer; maximum of 66 years allowed.

Site Improvements: Performed by tenant at tenant’s sole cost; property would be leased “as-is.” Tenant responsible to obtain all applicable permits and other entitlements.

Payment Structure: Monthly minimum rent, with or without “up side.”

RFP – Selection Process
Staff proposes to negotiate with up to three proposers. Because the proposals may be diverse in nature, the content and key issues for the negotiations that follow the initial selection of the top proposer(s) will be shaped by the proposed uses of the property. The following key criteria will guide the selection process; however the Port reserves the right to exercise broad discretion in the review and evaluation of all proposals received.

1. Compliance with stated maritime uses of the property and compatibility with other current uses at the seaport
2. Amount of minimum annual rent to the Port
3. Financial capacity of proposer to operate/develop property
4. Timing of occupancy (sooner is better)
5. Demonstrated experience to operate/develop property
6. Job generation, quality,type of jobs, and environmental considerations
7. Local participation and compliance with applicable Port policies

RFP – Schedule & Next Steps
Staff is proposing a relatively aggressive schedule for the RFP process, based on the following approximate milestone dates. This schedule may need to be revised based on the proposals received, the number of proposers with whom the Port chooses to negotiate, and the complexity of the proposals under consideration.
<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 26, 2013</td>
<td>Informational report to Board</td>
</tr>
<tr>
<td>October 4, 2013</td>
<td>Issue RFP, subject to extent of input from the Board on 9/26/13</td>
</tr>
<tr>
<td>December 5, 2013</td>
<td>Proposals due</td>
</tr>
<tr>
<td>December 2013</td>
<td>Identify short list of proposers, if appropriate responses received</td>
</tr>
<tr>
<td>January 2014</td>
<td>Start negotiations (or evaluate options for tenancy if RFP process did not result in desirably responses)</td>
</tr>
<tr>
<td>March 2014</td>
<td>Conclude negotiations with winning proposer(s)</td>
</tr>
<tr>
<td>April 2014</td>
<td>Finalize deal documents (if negotiations were successful) and present to the Board for approval</td>
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If the proposed RFP process does not yield responses in line with Port’s strategic goals, staff will return to the Board to discuss pursuing other available options.
ATTACHMENT B

February 19, 2014 Port Staff Memo re:
Environmental Issues Associated with Handling Export Coal, including Assembly Joint Resolution No. 35 “Relative to Exportation of Coal”
TO: Mr. Richard Sinkoff, Director of Environmental Programs and Planning

FROM: Ms. Anne Whittington, Environmental Assessment Supervisor

DATE: February 19, 2014

SUBJECT: Environmental Issues Associated With Handling Export Coal

On December 20, 2013, staff were asked to prepare an analysis of issues associated with handling export coal cargo based on proposals received by the Port of Oakland (Port) in response to the Howard Terminal Request for Proposals (RFP) No. 13-14/06. Mr. Jerry Jakubauskas, Assistant Environmental Planner, and I prepared this memo in response to that request.

The Trafigura/Impala/Bowie proposal describes their proposed bulk cargo, including coal, in some detail, so the analysis below is based on information in their proposal. Their projected annual throughput volume by the 5th year of operations is 8.3 million tons, consisting of coal (4.0 million tons), iron ore fines (2.0 million tons), iron ore pellets (1.0 million tons), petroleum coke (1.0 million tons) and borax (0.3 million tons).

The CCG/Metro Ports/Kinder-Morgan proposal did not contain enough information to evaluate proposed uses, but we note that this proposal also appeared to indicate coal as one of the possible commodities that could be handled at Howard Terminal.

The environmental issues associated with handling export coal at Howard Terminal (Berths 67-68) can be parsed into three broad areas based on location and the Port’s ability to control or address relevant environmental issues. Some of the topics for environmental analysis are identified below:

**Terminal site (most control)**

- Fugitive coal dust and local air quality. The Port should require that the facility be state of the art (storage domes or silos to store coal; enclosed conveyor and ship-loader systems). This is technically feasible, and is largely described in the proposal.
- Bituminous coal, one of the proposed cargo types, is associated with a risk of explosions; the proposer noted in a clarification letter dated January 8, 2014 that “coal is subject to spontaneous combustion under the right conditions” (p. 8)
- Train lengths of up to 1.5 miles and rail crossings in surrounding areas and within the port.
- New spur tracks and other Port operations.
- Deepening dredging of Berths 67-68 (and associated environmental and permit review) could potentially be required to accommodate larger and more heavily laden vessels than those now calling at Howard Terminal.
- Terminal redevelopment would trigger the latest storm water regulations.
- Visual impacts of the proposed eleven 190 ft. wide by 150 ft. high storage domes.
- Noise impacts of the loading, unloading and conveyor systems.
- Increased rail traffic could reduce previously approved and mitigated rail capacity for future
container cargo at the Port of Oakland.

- Construction of a 4,000 ft. long underground conveyor transport system in 10 ft. by 8 ft. tunnels to serve the storage domes will likely encounter hazardous materials in the soil and groundwater, and will require the developer to remediate as needed and install a protective cap in accordance with the “Covenant to Restrict Use of Property, Environmental Restriction, The Charles P. Howard Terminal Site, Oakland, Alameda County” that has been recorded with Alameda County on March 3, 2003. This would be true of any development that involves ground disturbance and digging, but hazardous materials management becomes a larger issue with the extensive soil disturbance proposed by an underground conveyor system. The weight of the proposed bulk cargo on the terminal could affect migration of the plume of hazardous coal tar located underneath the existing cap.

- Potential legal challenges may delay implementation of the project.

- Diesel particulate matter from train engines (although Trafigura/Impala/Bowie proposes Tier IV switch locomotives to reduce those impacts) and the emissions from Oakland’s overall cargo growth have already been analyzed and mitigated\(^1\). The railroads (BNSF and UP) have a memorandum of understanding with the California Air Resources Board (CARB) about locomotive emissions.

**Transport of coal from source to terminal (moderate control)**

- BNSF representatives testified at a 2009 U.S. Department of Transportation Rail Energy Transportation Advisory Committee meeting\(^2\) that, over a 400-mile trip, 645 pounds of coal dust were lost per car. With an average coal train length of 125 cars, 80,625 pounds of fugitive coal dust would be released into the surrounding environment per 400-mile trip.

- Although BNSF now requires that coal loading operators apply a surfactant, which can reduce coal dust by up to 85 percent, it is estimated that approximately 15 percent (12,000 pounds or 6 tons) is still being released into the environment and adjacent communities over the course of a 400-mile journey. Furthermore, coal dust may be deposited on ballast (the rock that lines the tracks) resulting in potential future clean-up requirements for ballast along the length of the track.

- The approximate distance from Utah and Colorado to the Port of Oakland is 800 to 1,200 miles, so Port staff estimate that 12 to 18 tons of coal dust could be lost during a trip from mines in those areas to the Port (other coal mining areas such as Wyoming and Montana are in the range of 1,100 miles from Oakland).

- The effect of train lengths of up to 1.5 miles on rail crossings in communities along the rail line and noise from train safety horns and rail crossing barriers.

- While studies recommend that coal rail cars should be covered to avoid release of coal dust, that is not yet a standard industry practice in the United States. If all rail cars are completely covered throughout the trip, as Bowie is proposing, this may considerably reduce, or even eliminate, the loss of coal dust.

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\(^1\) Emissions from overall cargo throughput at the Port of Oakland were analyzed and mitigated through environmental documents considered and adopted by the Board of Port Commissioners: “Oakland Army Base Area Redevelopment Plan Environmental Impact Report” (2002), “2012 Oakland Army Base Project Initial Study/Addendum” (2012), and Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (2012).

Coal consumption in Asia (little or no control)

- The proposed project may run counter to California climate change policy that supports reductions in global greenhouse gas (GHG) emissions, such as those produced by coal-fueled plants, to slow down climate change. Increased GHG concentrations in the atmosphere promote global warming, with increased ocean temperatures leading to sea level rise.

- The California Assembly passed, and Governor Jerry Brown signed, Joint Resolution 35, Chapter 139 - Relative to exportation of coal\(^3\), which urges the President and Congress to restrict waterborne export of coal for electricity generation to any nation that fails to adopt regulations on GHG or hazardous air emissions as restrictive as those adopted by the U.S., or to secure and approve international agreements that result in emissions reductions equal to those in the U.S.

- International trade of cheap coal as compared to cleaner domestic energy sources, such as solar and wind.

- The potential for increased acid rain and atmospheric mercury deposition in the Pacific Ocean and Western U.S. from particulates that travel from Asia to North America due to wind patterns.

CEQA/NEPA and permits

The Port as lead agency will determine the type of California Environmental Quality Act (CEQA) document (i.e., Initial Study [IS]/Negative Declaration [ND], IS/Mitigated Negative Declaration [MND], or Environmental Impact Report [EIR]), the subject matter covered, public outreach procedures and schedule, document review cycles and other matters pertinent to cost and schedule.

Preparation and approval of a ND or MND may take six to nine months to complete, while an EIR may take a year or longer to complete. Time frames could be further extended, depending on the environmental topic studies required, the level of controversy, the number of comments, and any legal challenges. An EIR may be warranted to protect the project from certain types of legal challenge.

A permit from the San Francisco Bay Conservation and Development Commission (BCDC) would be required for new construction since most of Howard Terminal is within the BCDC jurisdictional area. Permit approval would take approximately nine months or longer, and BCDC would likely require public access mitigation for new construction. Furthermore, due to existing environmental deed restrictions, coordination with and approvals from the Department of Toxic Substances Control would also be required.

Any in-water work, such as berth deepening, that is not covered by an existing U.S. Army Corps of Engineers regulatory permit may necessitate environmental review under the National Environmental Policy Act (NEPA).

\(^3\) [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AJR35](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AJR35)
Potential controversy and other coal export facilities

Opposition to a coal export facility could come from the State of California (see attached California Assembly Joint Resolution 35, Chapter 139 - Relative to exportation of coal) and from any number of environmental and community groups that have expressed public concern regarding potential local, regional, and global impacts of U.S. ports exporting coal to Asia, and the harmful effects of burning coal on global warming and sea-level rise. Furthermore, U.S. Environmental Protection Agency staff wrote a letter to the U.S. Army Corps of Engineers about the potential health impacts, controversy, and endangered species impacts of coal export facilities, along with the need to examine cumulative impacts from the mine to the final user in Asia. See Figure 1: Major North American Coal Ports for a summary of major coal ports in North America. Current coal terminal facility proposals facing tremendous public scrutiny include:

Gateway Pacific Terminal (Bellingham, WA)
- Opposed by community, environmental and local Native American groups
- Terminal, transport, and foreign consumption issues similar to those previously mentioned for Howard Terminal

Millennium Bulk Terminal (Longview, WA)
- Over 163,000 comments received on scope of environmental review
- Opposed by community and environmental groups
- Terminal, transport, and foreign consumption issues similar to those previously mentioned for Howard Terminal

Based on this information, the Port could be involved in protracted discussions and potential litigation regarding operation of a coal export facility.

West Coast coal terminals no longer operating
Port of Portland (1980s)
- Coal market proved to be unstable and unreliable

Port of Los Angeles (1997-2006)
- Demand failed to meet minimum annual guarantee requirements and the terminal was shut down.

Existing coal and petroleum coke terminals in California
Port of Long Beach - Metro Ports (Pier G)
- Terminal supports the receipt, storage and vessel loading of coal and petroleum coke sold for export and consists of six enclosed petroleum coke and coal storage facilities
- Terminal is 23 acres (Howard Terminal is 50 acres), with covered storage for 540,000 tons
- Other handled products include potash, borax, sodium sulfate, soda ash, concentrates, and prilled sulfur

Port of Benicia - Benicia Industries (Wharf No. 95)
- Exports petroleum coke and petroleum products

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Port of Stockton
  • Exports 2.3 million tons of coal per year

Attachment: California Assembly Joint Resolution 35, Chapter 139, Relative to exportation of coal

cc: Anne Whittington, Environmental Programs and Planning
    Jerry Jakubauskas, Environmental Programs and Planning
    Delphine Prévost, Maritime
Figure 1: Major North American Coal Ports

Assembly Joint Resolution No. 35

CHAPTER 139

Relative to exportation of coal.

[ Approved by Governor September 18, 2012. Filed with Secretary of State September 18, 2012. ]

LEGISLATIVE COUNSEL’S DIGEST


This measure urges the President of the United States and the 112th Congress to enact legislation to restrict the transshipment for waterborne export of coal for electricity generation to any nation that fails to adopt rules and regulations on the emissions of greenhouse gases or hazardous air emissions that are at least as restrictive as those adopted by the United States or, in the alternative, to secure and approve international agreements to ensure all nations adopt regulations and technology that result in emissions reductions equal to those in place in the United States. The measure would urge the Governor of California to inform the Governors of the States of Oregon and Washington of the significant health risks to the people of the Pacific Coast states if large coal export terminals and coal transport expansions are licensed and permitted to operate on or near the coast of the States of Oregon and Washington.

Fiscal Committee: yes

WHEREAS, California law requires electricity providers to procure not less than 33 percent of retail sales of electricity from renewable energy resources by December 31, 2020; and

WHEREAS, California has emerged as a global leader in the transition from fossil fuel dependence to a clean energy economy; and

WHEREAS, California law limits long-term investments in baseload generation by utilities to powerplants that meet strict greenhouse gas emissions standards. According to the State Energy Resources Conservation and Development Commission, no existing coal plant has demonstrated that it currently complies with the greenhouse gas emissions limit on long-term investments in baseload generation; and

WHEREAS, The United States Environmental Protection Agency in December 2011 issued regulations requiring coal-fired powerplants to significantly reduce emissions of mercury, arsenic, and other toxic pollutants within four years; and

WHEREAS, Hazardous emissions from coal powerplants threaten health locally and at great distances; and

WHEREAS, Coal exports from United States ports to Asia have risen by almost 240 percent from 3.8 million tons in 2009 to over 13 million tons in 2010; and

WHEREAS, The environmental consequences of massive coal exports to Asia are severe, including the burning of millions of tons of coal that releases hazardous air emissions into the atmosphere and increased mountaintop removal projects; and

WHEREAS, Burning coal for electricity generation worldwide is the main cause of greenhouse gas emissions and the planetary climate crisis; and
WHEREAS, Coal burning has contributed to significant human health risks in all age groups through the emissions of ozone, sulfur dioxide (SO2), particulate matter, nitrogen oxides (NOx), mercury, and carbon dioxide (CO2); now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature urges the President of the United States and the 112th Congress to enact legislation to restrict the transshipment for waterborne export of coal for electricity generation to any nation that fails to adopt rules and regulations on the emissions of greenhouse gases or hazardous air emissions that are at least as restrictive as those adopted by the United States or, in the alternative, to secure and approve international agreements to ensure all nations adopt regulations and technology that result in emissions reductions equal to those in place in the United States; and be it further

Resolved, That the Legislature urges the Governor of California to inform the Governors of the States of Oregon and Washington of the significant health risks to the people of the Pacific Coast states if large coal export terminals and coal transport expansions are licensed and permitted to operate on or near the coast of the States of Oregon and Washington; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the President pro Tempore of the United States Senate, the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.