June 9, 2015

Via Electronic Mail

Oakland City Council
c/o Office of the City Clerk
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Re: Opposition to Approval of Community Facilities District at former Oakland Army Base Because of Failure to Look at Impacts from Shipping Coal

To the Oakland City Council:

I. INTRODUCTION

I am writing on behalf of Sierra Club, West Oakland Environmental Indicators Project, Communities for a Better Environment, and San Francisco Baykeeper, regarding the City Council’s pending approval of a Community Facilities District at the Gateway Industrial District located on the former Oakland Army Base. Recent evidence shows plans to ship millions of tons of Utah coal through part of this facility. These groups stand together to oppose this approval because their members live, work and recreate in and around the former Oakland Army Base, and development of this sort at the base without full environmental review jeopardizes the health and quality of life of these members.

Neither the Port of Oakland nor the City of Oakland has ever examined the environmental consequences of shipping millions of tons of coal through this facility. Creation of the Community Facilities District is yet another discretionary City approval that enables the development of the Oakland Army Base, including shipping activities at the base. Therefore, full environmental review of the effects of siting a coal terminal at the base must be completed before this approval can be issued.

These concerns about coal exports combine with concerns about the overall expansion and redevelopment currently underway. Development efforts are supposed to be a public-private venture. Unfortunately, that partnership has not been the case as these developments have occurred without addressing the significant issues disproportionately facing port-adjacent communities in Oakland. The public is subsidizing these developments monetarily through incentives and funding, but also through their health. Until the public has input on how this
development occurs and how to address the real and serious consequences facing overburdened communities, the City should pause expansion and redevelopment efforts.

II. RECENT DEVELOPMENTS AT THE OAKLAND ARMY BASE

The Oakland Army Base redevelopment is a massive project which will convert the former base to provide additional transportation and logistics infrastructure, as well as space for various commercial, industrial, and retail enterprises. (City of Oakland, 2012 Oakland Army Base Project, Initial Study/Addendum (May 2012) at pp. 1-4.1) A portion of the redevelopment area – the Gateway and Port Development areas – will be used to “provide new, state-of-the-art facilities to support the international, national, regional and local movement of goods by way of the seaport, railroad and roadway networks.” (Ibid. at p. 29.) This area of the project is also referred to as the Oakland Global Trade and Logistics Center. Enhancing the capacity of a pre-existing marine terminal, located at Berth 7, is one of the developments planned for the area. (Ibid. at p. 30.) This terminal, known as the Oakland Bulk and Oversized Terminal (“OBOT”), would be used to transport cargo between the railroad and ships, and its “[e]xport cargo would consist of non-containerized bulk goods, and inbound cargo would consist primarily of oversized or overweight cargo unable to be handled on trucks.” (Ibid.)2 The environmental review prepared for the base development did not in any way mention, consider, or study the environmental and health effects of shipping coal.

New information has come to light recently indicating that a significant part of OBOT’s shipping capacity will be dedicated to the shipment of Utah coal. In April 2015, Utah’s Community Impact Fund Board approved $53 million for investment in the OBOT.3 In exchange for this investment, Utah will have a guaranteed right to use 49% of OBOT’s capacity, or 9 million metric tons.4 Utah state officials expect that OBOT will ultimately receive 4 to 5

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1 Available at http://ec2-54-235-79-104.compute-1.amazonaws.com/Government/o/PBN/OurServices/Application/DOWD009157.htm.
2 Similarly, the City and Port’s federal funding application makes no mention of the terminal being used for the transportation of coal, and simply states that “Berth 7 would be converted to a modern break-bulk terminal for movement of commodities such as iron ore, corn and other products brought into the terminal by rail. The terminal would also accommodate project cargo such as windmills, steel coils and oversized goods.” (City of Oakland and Port of Oakland, TIGER III Funding Application Project Narrative at p. 4; available at http://www.portofoakland.com/pdf/about/TIGER_application.PDF)
million metric tons of Utah coal by rail, which will then be exported by tanker ship to overseas markets. The source of the remainder of the coal is unknown.

The surrounding community will be heavily affected by the movement of large quantities of coal. The City of Oakland and other agencies have not analyzed how moving coal through the area would affect the local environment or the health of community residents, and this analysis must be completed before further development at the Oakland Global Trade and Logistics Center continues.

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

1. Exporting Coal Will Further Burden a Highly Impacted Community

The community surrounding the redevelopment area and Port of Oakland already suffers from poor air quality and poor health outcomes, due to Port operations and other industrial activities in the area. Allowing construction of a coal terminal to go forward without adequate study of how it will add to these burdens and cumulative impacts creates unacceptable risks to the community.

According to the California Environmental Protection Agency’s environmental health screening tool, CalEnviroScreen, the community adjacent to the redevelopment area is severely burdened by diesel pollution and hazardous waste exposure, and its residents suffer from extremely high rates of asthma. The health outcomes for area residents are grim. When compared to the outcomes for residents in the hillside neighborhoods of Oakland, residents living near the redevelopment area are more likely to give birth to premature or low birth weight children, suffer from diabetes, heart disease, stroke, and cancer. Individuals born in West Oakland can expect to die 15 years earlier than individuals born in the Oakland Hills.

Transporting coal through this community will only add insult to the current injuries suffered in this community. Coal is most commonly transported in open train cars, and

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5 Ibid.
7 Cal EnviroScreen Results for Census Tract 6001401700, available at http://oehha.ca.gov/ej/ces2.html.
9 Ibid. at p. 5.
according to BNSF studies (one of the rail operators that will be serving the proposed terminal), these open train cars can shed some 500 to 2,000 lbs. of coal dust from each rail car. Large quantities of coal dust will be released by trains – some 60,000-240,000 pounds of coal per train over the rail route – as coal trains are frequently 120 cars long. For a facility exporting approximately 9-10 Million Tons of coal per year, 4 trains or more each day can be expected.

Coal dust contains many harmful components and exposure to fugitive coal dust from coal trains, coal storage piles, loading and unloading practices, and emissions from dust control systems has various negative health effects, including causing impaired lung function, cardiovascular disease, and developmental disorders in children. Continuous exposure to coal dust can have serious effects upon lung function and lead to lung disease, which prompted the U.S. Department of Labor to pass regulations protecting coal miners from coal dust exposures. Coal dust is highly combustible and creates immediate physical risks from explosions and fires. Combustible coal dust also creates long-term environmental and health effects – a recent study concluded that the spontaneous combustion of coal stocks, in addition to the “obvious safety hazard and the potential loss of valuable assets” constituted substantial sources of climate-change forcing greenhouse gas emissions.

Neighborhoods near existing coal export terminals document significant localized pollution, nuisance, and economic loss from coal dust. The toxic chemicals commonly found in coal dust, including lead, mercury, and arsenic, also pose a significant threats to the health of San Francisco Bay along with its wildlife, fisheries, and recreational users. Thus, the

11 Ibid. (500 lbsx120 cars=60,000 lbs, 2000 lbs x 120 cars=240,000 lbs)
environmental review for the Oakland Global Trade and Logistics Center must examine the effects of operating a coal terminal in the area and properly mitigate its environmental and health effects.

2. Exporting Coal Will Contribute to Climate Change Effects

Exporting coal from Oakland also enables the continued use of coal as a fuel source, driving the continued production of climate change inducing greenhouse gas emissions, which have both local and global effects. California lawmakers have committed to reducing greenhouse gas emissions produced in the state, and the City of Oakland should not allow development of a coal export terminal which will interfere with these reductions goals. Exporting 10 million tons of coal per year is roughly equivalent to 20 million tons of carbon. Since West Coast port capacity is largely constrained, and there is less demand in the U.S. for coal due to the declining number of coal-fired power plants, a new coal export facility in Oakland would represent a net increase in carbon emissions.

Coal-fired power plants are a leading source of carbon dioxide emissions.17 As set forth by the United Nations’ Intergovernmental Panel on Climate Change, unrestrained greenhouse gas emissions like carbon dioxide are responsible for increasing global warming, and “[l]imiting climate change will require substantial and sustained reductions of greenhouse gas emissions.”18

As carbon dioxide emissions continue to increase, more stringent measures are needed in order to limit these emissions effects. The United States National Oceanic and Atmospheric Administration, which tracks carbon dioxide emissions, recently warned the public that global levels of carbon dioxide have exceeded 400 parts per million (“ppm”) for the first time in recorded history.19 Stabilizing levels of carbon dioxide emissions will not be enough to halt rising carbon dioxide levels, and as stated by James Butler, the head of NOAA’s Global Monitoring Division, sharp reductions are needed in order to make meaningful changes to emissions trends:

Elimination of about 80 percent of fossil fuel emissions would essentially stop the rise in carbon dioxide in the atmosphere, but concentrations of carbon dioxide would not start decreasing until even further reductions are made and then it would only do so slowly.

(Ibid.)

Lawmakers in the State of California have recognized the urgent need to reduce the production of greenhouse gas emissions, and over the years have passed landmark legislation like AB 32 and issued executive orders to enable reductions goals. Most recently, in April 2015, Governor Jerry Brown issued an executive order mandating that the state reduce its greenhouse gas emissions to 40 percent below 1990 levels by 2030.20 Further, Joint Assembly Resolution 35 urged Governor Brown to inform neighboring governors in Washington and Oregon of the health and climate risks associated with exporting coal to countries with air quality regulations less stringent than our own.21 In fact, on June 17, 2014, the Oakland City council approved a resolution opposing the transportation of hazardous fossil fuels like coal through the City, expressing concern about the effects of coal exports and stressing the need for a transparent process and full environmental review.22

The environmental review for the Oakland Global Trade and Logistics Center must include consideration of the climate change effects of operating a coal export facility, particularly given the increasingly pressing need to track and limit greenhouse gas emissions. The City of Oakland should not allow development of a coal terminal which will facilitate serious climate change effects, without completing the requisite environmental studies needed to fully understand these effects.

IV. CALIFORNIA LAW REQUIRES STUDYING THE EFFECTS OF A DEDICATED COAL EXPORT TERMINAL AT THE OAKLAND ARMY BASE DEVELOPMENT

As noted above, there has never been any review of the environmental and health effects of siting a coal export terminal at the Oakland Global Trade and Logistics Center. This environmental review must be completed before any further approvals related to the redevelopment area can be issued.

21 http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/ajr_35_bill_20120918_chaptered.html
22 Oakland City Council, Resolution No. 85054 C.M.S. (June 17, 2014); available at https://oakland.legistar.com/LegislationDetail.aspx?ID=1747455&GUUID=D41B7760-10B0-455E-B1F5-88894FBAD097
When the redevelopment of the Oakland Army Base was first proposed, the environmental review for the project made no mention of the possible shipment of coal through the development. (See City of Oakland, Draft Environmental Impact Report, Oakland Army Base Area Redevelopment Plan (April 2002); available at http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak025318.pdf.) Similarly, while the Initial Study/Addendum for the project prepared in 2012 discussed the facility handling “non-containerized bulk goods,” it did not raise the possibility that coal could be shipped through the development. (See Initial Study/Addendum at p. 30; Figure 1-2.) Coal poses unique environmental and health harms that other bulk goods do not pose.

Utah’s investment in the development of the Oversized and Bulk Terminal would commit the facility to shipping millions of tons of Utah coal per year. As outlined above, shipping coal through Oakland would have numerous health and environmental effects. Utah’s investment also makes substantial changes to the type of shipping contemplated in the initial redevelopment project proposal, and represents new information that was not available when the environmental review documents were prepared in 2002 or 2012.

Under CEQA, these circumstances create the obligation to complete further environmental review, in the form of a subsequent or supplemental environmental impact report. (Pub. Res. §21166; 14 Cal. Code Regs., tit. 14, §15162 (“CEQA Guidelines”); Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agric. Assn. (1986) 42 Cal.3d 929, 937 [changes to size and scope of planned fairground warranted further EIR]; Security Environmental Sys., Inc. v. South Coast Air Quality Management Dist. (1991) 229 Cal.App.3d 110, 125 [new data regarding facility emissions and availability of potential mitigations required further environmental review].) As the CEQA lead agency responsible for conducting environmental review of the development of the Oakland Army Base, the City of Oakland must prepare the required additional environmental review. (See 2002 DEIR p. 1-4.) The City’s approval of the Community Facilities District (“CFD”) at the former Oakland Army Base is the type of discretionary approval that requires reopening of the CEQA process. (See CEQA Guidelines §15162(c); Bozung v. LAFCO (1975) 13 Cal.3d 263, 281 [annexing agricultural land to city will “ultimately” have environmental effects requiring application of CEQA].)

The CFD is being formed for the explicit purpose of funding the creation and maintenance of public infrastructure at the former Oakland Army Base, including the area encompassing the Oakland Global Trade and Logistics Center:

A Community Facilities District (CFD) is proposed for the maintenance of the public improvements and infrastructure at the Gateway Industrial District, located on the

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former Oakland Army Base. A Community Facilities District is a City entity that is formed to maintain and fund the maintenance of typically new public improvements, in this case new streets and utilities at the former Oakland Army Base (Gateway Industrial District). The current City personnel and budget capacity is not sufficient to maintain and operate the new public improvements at the former Oakland Army Base (Gateway Industrial District). Therefore, in order to facilitate and support the development of the former Oakland Army Base property, the City and its developers have agreed to create a Community Facilities District.

(John A. Flores, Interim City Administrator, Agenda Report for Gateway Industrial District (Army Base) Community Facilities District (May 12, 2015) at pp. 2-3; available at https://oakland.legistar.com/Calendar.aspx.) The funds generated by the CFD will be used for the specific purpose of maintaining “public access areas, public streets and bike and pedestrian trails in the Gateway Industrial District,” as well as the maintenance and replacement of streets, landscaping, sidewalks, sewers, rail crossings and the Frontage Road. (Ibid. at p. 5, Estimate of Annual Maintenance Cost). This activity will “ultimately” have environmental effects and facilitates shipping and transportation through the former Oakland Army Base. Therefore, before approval for the CFD is granted, the City of Oakland must consider the full suite of environmental effects that such an approval will generate. The City’s further environmental review must include studying the effects of a dedicated terminal for coal exports.

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Thank you for your consideration of these comments. As you are aware, facilitating the shipment of an exceptionally dangerous fuel like coal through the Port generates significant public interest. This is especially the case when our decision-makers have never actually vetted the consequences of this conduct. Given the threats posed and immense public interest, we request that the City of Oakland conduct the full and comprehensive environmental review mandated by CEQA, and prepare an environmental review document that, among other things, accurately describes the project in its entirety and evaluates the specific effects of exporting coal from the area.

Sincerely,

Irene Gutierrez, Attorney
Earthjustice

On behalf of:
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