

**COMMUNITIES FOR A BETTER ENVIRONMENT
NATURAL RESOURCES DEFENSE COUNCIL
SIERRA CLUB**

June 23, 2014

Via Messenger

Honorable Mayor and Members of the City Council
c/o Larry Herrera, City Clerk
City of Long Beach California
333 West Ocean Blvd., Lobby Level
Long Beach, CA 90802

**Re: Appeal of Long Beach Board of Harbor Commissioners' Ordinance
Approving a New Operating Agreement with Metropolitan Stevedore
Company and New Lease with Oxbow Energy Solutions, LLC**

Dear Honorable Mayor and Members of the City Council:

On behalf of Communities for a Better Environment (“CBE”), the Natural Resources Defense Council (“NRDC”), and Sierra Club, we write to appeal the decision of the Port of Long Beach Board of Harbor Commissioners (“Port” or “Board”) to not engage in a California Environmental Quality Act (“CEQA”) analysis for the approval of the Operating Agreement with Metropolitan Stevedore Company (“Metro”) and the new lease with Oxbow Energy Solutions (“Oxbow”), a company founded and owned by William Koch. These agreements went to the Board on May 28, 2014 and June 9, 2014. The Board approved the two agreements despite significant public opposition related to the failure to undergo any CEQA analysis.

This letter serves as the formal appeal of the Port’s ordinance approving the new operating agreement with Metro and the new lease with Oxbow. Long Beach Municipal Code § 21.21.507; California Public Resources Code § 21151(c).¹ We have previously described the legal failings of the Port’s determination that the approval of the new operating agreement and lease is not subject to the California Environmental Quality Act (“CEQA”) in a comment letter submitted with attachments on June 9, 2014, which is by this reference incorporated in its entirety. After careful review of the Port’s decision, we have determined that the Port’s approval of these new agreements does not comply with CEQA. Accordingly, we respectfully request that the City Council remand the determination back to the Board with directions to undertake an environmental review.

¹ Pursuant to Long Beach Municipal Code section 21.21.507, we have submitted documents previously submitted on this project on the attached thumb drive. That device includes the letter submitted to the Board of Harbor Commissioners and all attachments referred to in this letter.

I. BACKGROUND OF THE PROJECT

The current project entails several components. The Board of Harbor Commissioners approved a new 20-year Operating Agreement between Metropolitan Stevedore Company (Metro) and the Port for continued stevedoring services of coal, coke, and a variety of other commodities at Pier G. In essence, Metro operates the bulk export facility under lease from the Port. Metro will remove 126,560 square feet of asphalt to be replaced with a 126,560 square feet of asphalt concrete, and various other construction projects at the facility. The location of the asphalt to be removed and replaced are at berths G212 and G213, a parking lot near berth G211A, and an area south of the coal storage shed.

The Board of Harbor Commissioners has also been asked to approve a new 15-year Lease between Oxbow Carbon and Minerals, LLC (Oxbow) and the Port for use of a 5.4 acre land pad occupied by a coal barn and associated improvements. Oxbow currently operates at the facility under a sublease agreement with Metro. The facility is used for storage and export of coal. The new lease includes a Guaranteed Minimum Annual Throughput of coal, which requires Oxbow to ship a minimum of 1.7 million metric tons (“MT”) of coal per lease year for the first 5 years, or else pay economic penalties. After that 5 year term, the Executive Director of the Port may “in his sole and absolute discretion...approve in writing a greater amount per year of petroleum coke or any other commodity.” The Board refused to engage in any environmental review, instead claiming these agreements and projects are categorically exempt from CEQA.

The following points outline the major deficiencies regarding the Board’s environmental determination:

II. The Proposed Project Does Not Fall Under any Categorical Exemptions.

a. The Proposed Project is Not Categorically Exempt from CEQA Pursuant to CEQA Guidelines Section 15301.

The Port argued that the proposed project fit within Categorical Exemption Class 1 because the new agreements are merely approvals of on-going operations with no or “negligible” expansion. However, as mentioned in our previous comment (June 9, 2014 Comment, at 5-7), the new agreements have new coal shipment minimum requirements as well as unfettered discretion to increase those requirements. Those new provisions indicate a foreseeable expansion that is not “negligible,” and therefore does not meet the Class 1 Categorical Expansion.

Class 1 exempts projects that consist of the “operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no

expansion beyond that existing at the time of the lead agency's determination." CEQA Guidelines § 15301. The key consideration is whether the project involves negligible or no expansion of an existing use. *Id.* Exemption categories are not to be expanded or broadened beyond the reasonable scope of their statutory language; such a construction allows the court to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. *See Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786 at 792.

The Port argued that the proposed project involves the ongoing operations of the Metro and Oxbow facilities established through separate and new agreements with the Port, and is therefore categorically exempt under Class 1. However, a new leasing agreement that incorporates a Guaranteed Minimum Annual Throughput (GMAT or Minimum Tonnage) of coal to 1.7 million MT is not merely maintaining an ongoing operation at an existing facility, but rather is an entirely new requirement for the operation of that facility. Stated more precisely, the new lease with Oxbow includes economic penalties unless it exports at least 1.7 million MT of coal annually through the facility. This minimum tonnage provision specific to coal did not exist in any prior version of the lease for Pier G.

Instead, the previous agreements had a general minimum dollar amount requirement for several bulk commodities, as opposed to a defined minimum coal export amount. The Second Amendment to the Second Amended and Restated Preferential Assignment Agreement ("Prior Agreement") with Metro had a Guaranteed Minimum Tonnage Dollar Equivalent (GMTDE or Dollar Minimum), which is much different than Minimum Tonnage. The Dollar Minimum in the Prior Agreement required minimum tariff charges to be paid by Assignee to the City for a 4 year term that "shall be the dollar value equivalent of 17,800,000 MT." The Dollar Minimum was calculated by multiplying the tonnage amount (17.8 million MT) to the total of the wharfage charge and the equipment rental charge. The 17.8 million tonnage amount to calculate the Dollar Minimum did not refer to any specific commodities or materials to be exported, and was a purely economic term for calculating the lease amount to be paid, regardless of how much coal or any other commodity was exported through Pier G. For reference, the Metro bulk export facility exports a mixture of bulk commodities like soda ash, sulfur, coal, and petcoke.²

The new lease agreement with Oxbow, on the other hand, requires a GMAT of 1.7 million MT of coal per year for the first 5 years. The new lease states that the "Lessee guarantees, during the first five-year segment of the Lease, that it will ship from the Premises, the following quantities of coal per lease year: 1.7 million MT." The lease then creates an economic penalty for failing to export the minimum amount of coal, stating "if the Lessee has not, by the end of the lease year, shipped quantities of coal from the Premises at least equal to the Minimum Tonnage for the lease year, Lessee shall pay to

² See Metro Ports Long Beach information page, (last accessed June 6, 2014), available at <http://www.metroports.com/locations/?r=Long%20Beach%2C%20CA>.

the city . . . a sum calculated by multiplying the difference in quantity between the applicable Minimum Tonnage and the actual quantity shipped for that lease year times the then-current applicable wharfage and shiploader charges.” The Minimum Tonnage therefore requires Oxbow to export a minimum amount of coal, and only requires a penalty if that amount is not met. Moreover, this minimum is only a floor, and it is reasonably foreseeable that more coal will be shipped from this facility during the term of this lease.

Since this new lease provision requires a minimum amount of coal to be exported—a requirement that did not exist in the previous agreements—the project is not simply leasing “existing public or private facilities involving negligible or no expansion beyond that existing at the time of the lead agency’s determination.” Rather, a Minimum Tonnage of 1.7 million MT of coal is significantly more than the previous amount of coal required to be shipped, which was 0 MT. The difference between 0 MT per year and 1.7 million MT per year is not a “minor alteration” nor is it “negligible.” A “minor alteration” cannot be an activity that creates a reasonable possibility of a significant environmental effect. *See Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165 at 1195. Here, the increase is more than just “negligible,” but rather meets the low bar of creating a reasonable possibility of a significant environmental effect. That effect must therefore be properly analyzed under CEQA.

Moreover, in years 6 through 15 of the lease, the Executive Director “may approve in his sole and absolute discretion” increases in the amount of “petroleum coke or any other commodity.” That means that in year 6, the Executive Director could potentially require a minimum of 10 million MT of coal to be shipped through Pier G under his sole and absolute discretion. That is not “negligible.” This is also especially troubling because the Port has expressed a desire to increase its coal exports in the future.

The Port hired TranSystems to determine how the Port’s coal exports could grow. As the report by TranSystems explains:

Metro’s customer for coal exports would like to increase their volumes, but there are currently some operational and infrastructure constraints that would make this difficult. POLB would like to accommodate the growth, preferably without negatively impacting other customers (e.g., the soda ash exporter, who is perceived by the coal exporter as being an impediment to their growth). POLB tasked TranSystems with analyzing the bulk operations at Pier G to determine: The actual annual capacity of the facility to rail-served products [and] [i]f it is possible, with reasonable operating changes, to accommodate the coal exporters growth without affecting soda ash volumes.

TranSystems, POLB Pier G Bulk Handling Facility Analysis, Final Report, at 3 (Feb. 13, 2013) (Revision 1.0, Administrative Draft). This analysis articulates the Port’s desire to increase the throughput of coal and petcoke to increase revenues. Also, private companies

with a stake in this facility would surely welcome this type of increase, which have recently touted collaboration with the Port to increase rail capacity to handle 10,000,000 MT of commodities.³

Given these statements and the provisions in the agreement allowing for unfettered discretion to increase the throughput, it is reasonably foreseeable that coal exports will increase substantially more per year than the 1.7 million MT minimum. If Metro, Oxbow, and the Port are working to increase rail capacity to 10 million MT, and the Port is seeking higher minimum exports in this agreement —1.7 million MT for the first 5 years and an unlimited discretionary increase in coal or petcoke exports thereafter—it also means any infrastructure, including rail construction, and the lease renewal would be construed as connected actions that should be analyzed in the same CEQA analysis. *See Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 (A lead agency may not split a single large project into smaller pieces so as to avoid environmental review of the entire project).

Additionally, Metro is proposing to remove 126,560 square feet of asphalt at berths G212 and G213, a parking lot near berth G211A, and an area south of the coal shed, and replace it all with 126,560 square feet of asphalt concrete. Metropolitan Stevedore Company, Exhibit D. The removal of 125,560 square feet of asphalt is roughly the size of two football fields or an average city block, and cannot be described as a “minor alteration.” The plain language of CEQA Guidelines § 15301 provides examples of the types of “existing facilities” and activities that are meant to be exempted under Class 1 Categorical Exemptions, which include interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances. The statute in no way contemplates the replacement of large quantities of asphalt as a “minor alteration.” To construe the replacement of that much asphalt as exempt would expand the exemption category beyond the reasonable scope of the statutory language. A project proposal of this magnitude should not escape environmental review under CEQA.

Even if this project met the Class 1 exemption, the alteration must be so small as to be one that does not cross the threshold level set by the guidelines for an exception to the categorical exemptions. *See Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165 at 1195. There is an exception to Categorical Exemptions when there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. *See CEQA Guidelines § 15300.2.* The unusual circumstances test is satisfied where the circumstances of a particular project (i) differ from the general circumstances of the projects covered by particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects. *See Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413 at 426.

³ MetroPorts, Excerpt from Application for Port of Oakland Coal Export Facility [Attachment A]. All attachments cited in this letter have been provided to the City Clerk.

The general circumstances of projects covered by CEQA Guidelines § 15301 involve “minor alterations” such as the restoration of deteriorated or damaged structures to meet public health and safety standards, or an addition to an existing structure that is no more than 10,000 square feet. *See* CEQA Guidelines § 15301. A new lease agreement with a 15-year term that requires a minimum of 1.7 million MT of coal to be shipped for the first five years differs from the general circumstances of projects covered by the Class 1 Categorical Exemption because it involves a large industrial expansion. This amount is not “negligible,” especially considering that after year 5, the Executive Director has the sole and absolute discretion to increase the amount of coal shipped to whatever quantity he/she desires. Similarly, the replacement of 126,560 tons of asphalt is not a minor addition or upgrade, but the total replacement of what currently exists, which is not a general circumstance of the projects covered by the exemption. Both the foreseeable increase in coal shipped and the replacement of asphalt create an environmental risk that does not exist for the general class of exempt projects, and should therefore meet the significant effect exception under § 15300.2. *See* CEQA Guidelines § 15300.2.

In addition, as discussed below, there is more and recent evidence of the increased threat to health and safety from train derailments carrying coal and other accidents that render this an “unusual circumstances” meriting CEQA review. New evidence of the severity of greenhouse gas (GHG) emissions from coal and its impact on the climate also warrant an “unusual circumstance” with significant environmental effects. The Port never analyzed GHG emissions or the harms of coal dust in the 1992 Negative Declaration, and must do so now to make an informed decision.

b. The Proposed Project is Not Categorically Exempt from CEQA Pursuant to CEQA Guidelines Section 15302.

The Port also argued that the proposed project fit within Categorical Exemption Class 2 because the new agreements only require “minor repairs to existing structures.” However, as we described in our prior comment (June 9, 2014 Comment, at 8-9), the replacement of 126,500 square feet of asphalt is not “minor,” nor should asphalt be considered a “structure.” Class 2 exempts projects that consist of the “replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced...” CEQA Guidelines § 15302. The Port argued that the proposed project meets this exemption because the new agreements approve the replacement of equipment and structures in an effort to bring assets back to operational standards and to increase site safety, and the maintenance and repair work will not add storage capacity or export capabilities to the Metro Component of the proposed project. However, asphalt is neither a structure nor facility for the purpose of a Class 2 exemption, nor is a lease that requires a minimum amount of coal to be shipped.

There is no case that applies a Class 2 exemption beyond the reasonable scope of the plain language of the statute. *See Save our Carmel River v. Monterey Peninsula Water Management District*, 141 Cal.App.4th 677 at 698. The typical application

involves an agency's consideration of plans for reconstruction or replacement of an existing structure. *See Dehne v. County of Santa Clara*, 115 Cal.App.3d 827 at 842. The removal and replacement of asphalt is not the replacement of a structure or facility. Similarly, even if the replacement of asphalt and the changes to existing structures falls under this Class 2 categorical exemption, approving a lease that establishes an economic penalty for moving less than 1.7 million MT of coal per year and allowing for potentially unchecked increases in years 6 through 15 of petcoke, coal or other commodities, cannot be considered the replacement of a structure or facility pursuant to the statute. The Board's approval of the lease with Oxbow and the Operating Agreement with Metro should therefore not be exempt from proper environmental analysis under CEQA.

Finally, both the foreseeable increase in coal shipped and the replacement of asphalt create an environmental risk that does not exist for the general class of exempt projects, and should therefore meet the significant effect exception under § 15300.2. *See* CEQA Guidelines § 15300.2. *See supra* § IIa.

III. The 23-Page Negative Declaration from 1992 Does Not Cover the Proposed Actions the Port is Approving

As detailed in the comment we submitted (June 9, 2014 Comment, at 9), the 1992 Negative Declaration is not sufficient to cover the Port's proposed actions to approve the new lease and operating agreement. The Port claimed that no subsequent EIR or negative declaration is required under CEQA Guidelines section 15162. However, the approval of the new agreements involve substantial project changes from the 1992 project proposal that will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects. The new agreements with Oxbow and Metro will result in new and more significant impacts compared to the Coal Shed as described in the 1992 Negative Declaration. The Port is claiming that the only changes proposed are minor repairs to existing facilities, but as explained above, the replacement of 126,650 square feet of asphalt (which will cost more than \$5 million over the next 2 years) cannot be described as a minor repair. Removal and replacement of 126,560 square feet of asphalt will involve new and significant environmental effects that were never analyzed in the 1992 Negative Declaration.

Additionally, new information regarding the extent and severity of impacts from GHG emissions has become available since 1992. Under CEQA Guidelines section 15162, if the lead agency determines that there is "new information of substantial importance that was not known and could not have been known with the exercise of due diligence at the time of the previous negative declaration . . . [and] the project will have one or more significant effects not discussed in the previous negative declaration" that lead agency must prepare a subsequent EIR or negative declaration. CEQA Guidelines § 15162. The Port never analyzed GHG emissions in 1992, and the approval of new leases for coal shipment and storage will likely result in GHG emissions that have never been

analyzed.⁴ Under the California Global Warming Solutions Act of 2006 (AB 32), there is no doubt that GHG emissions are a potentially significant impact on the environment that must be analyzed. See *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515.

The Port mistakenly argued that it does not have to analyze GHG emissions since information regarding GHG emissions is not “new information.” The Port erroneously stated that even though GHG emissions and climate change data is arguably “new information” that was unavailable in 1992, case law has concluded that information regarding GHG emissions and climate change is not “new information.” *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515. The Port incorrectly characterized that case, in which the question was not about whether the agency had to analyze GHG emissions based on “new information,” but what threshold to use when analyzing GHG emissions based on “new information.” The case relied upon does not allow the Port to simply ignore GHG emissions entirely, which is what has happened in this case. The Port has never analyzed GHG emissions in the 1992 Negative Declaration, and it must analyze its GHG emissions from the proposed Oxbow and Metro agreements.

Finally, significant new information is now known about health and safety issues related to the export of coal by train. The sections below outline several issues that were not addressed in the 1992 Negative Declaration, including coal train accidents, coal dust emissions along the route of the train, and water quality impacts associated with the transport of coal.

a. The Environmental Review Document Must Consider the Cumulative Impacts of this Project Combined with the Broader Port Operations, Including Rail Transport

A valid CEQA analysis must discuss significant “cumulative impacts.” CEQA Guidelines § 15130(a); Public Resources Code § 21083. As we pointed out in our previous comment (June 9, 2014 Comment, at 10), the Port has attempted to avoid this analysis entirely. The Port has clear intentions to increase the amount of coal and petcoke exported, which will undoubtedly have significant cumulative impacts in the already heavily polluted Long Beach area. Those impacts must be analyzed. As the court stated in *Communities for a Better Environment v. Cal. Resources Agency*, (“CBE v. CRA”) (2002) 103 Cal.App.4th 98, 114:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that have been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear

⁴ According to the EIA, one ton of Powder River Basin coal generates 2.86 tons of CO₂, available at http://www.eia.gov/coal/production/quarterly/co2_article/co2.html.

insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

To comply with CEQA, an EIR must contain either “a list of past, present, and reasonably foreseeable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency,” or “a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or area wide conditions contributing to the cumulative impact.” CEQA Guidelines § 15130(b)(1); *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740. Here, there has been no analysis of cumulative impacts, which is particularly important in a place like Long Beach, which suffers from the perils of environmental injustice. The TransSystems analysis articulates the Port’s desire to increase the throughput of coal and petcoke to increase revenues, while private companies have touted collaboration with the Port to increase rail capacity to handle 10 million MT of commodities.⁵ These facts indicate that increased export of coal and petcoke is reasonably foreseeable, and must be analyzed. By completely flouting duties to analyze the impacts from this project, the Port is failing to assess and address the cumulative impacts from this project.

b. Specific Potential Impacts Related to Coal Exports Must Be Analyzed.

Below, we outline several potential impacts related to coal exports that were thoroughly detailed in our comments (June 9, 2014 Comment, at 12) that have not been analyzed for this project.

i. Climate Change Impacts are Significant, and Must be Analyzed

As stated above and in our prior comment (June 9, 2014 Comment, at 9-10), the Port has never analyzed the impact of these agreements on GHG emissions, and refuses to do so now. There is a vast body of new information that highlights the significant impacts of GHG emissions on health and the environment, and those impacts must be properly analyzed under CEQA. Coal and petcoke are major sources of carbon, a GHG pollutant that causes climate change. Petcoke is a byproduct of oil refining and is more than 90% carbon.⁶ Very recently, the United Nations’ Intergovernmental Panel on Climate Change (“IPCC”) released the fifth version of its frequently cited report reflecting the scientific consensus that unrestrained GHG emissions cause global

⁵ See TranSystems, POLB Pier G Bulk Handling Facility Analysis, Final Report, at 3 (Feb. 13, 2013) (Revision 1.0, Administrative Draft); See also MetroPorts, Excerpt from Application for Port of Oakland Coal Export Facility

⁶ Stockman, Lorne. “Petroleum Coke: The Coal Hiding in the Tar Sands.” Oil Change International: January 2013, available at <http://priceofoil.org/content/uploads/2013/01/OCI.Petcoke.FINALSCREEN.pdf>

warming. The fifth IPCC report confirms yet again that climate change is being caused by unrestrained carbon pollution from industrial activities.⁷

ii. A CEQA Analysis for the Project Must Evaluate Direct, Indirect, and Cumulative Climate Impacts

As described above and in our previous comment (June 9, 2014 Comment, at 16-18), the Port must analyze the direct, indirect, and cumulative impacts from Climate Change before approving the new agreements. The Port has never analyzed the impacts from Climate Change related to its own project or others, and there is no way to determine whether these new agreements will be significant without some type of analysis.

The impacts of exporting coal are not limited to the climate impacts of its use in overseas power plants. A valid CEQA analysis must also consider the climate and other air emissions of transporting these huge volumes of coal. For example, by one estimate, each trip of a fully loaded Panamax container ship to China, burns over 1100 tons of bunker fuel.⁸ Bunker fuel generates significant CO₂ emissions and other much more potent greenhouse gases like nitrous oxides (N₂O), methane, and black carbon. It also causes a variety of other toxic and harmful air emissions, including diesel particulates that are highly damaging to human health. These kinds of impacts are “indirect effects” of the decision to enter into agreements that allow for, and even require, the export of coal, and should be evaluated in a CEQA analysis, along with any appropriate mitigation. The Port has never analyzed any of these impacts, and must do so now.

The CEQA analysis must also include discussion of the impacts of mercury deposition that will be caused by the burning of this increased volume of coal. Coal burned in Asia is a major source of local mercury contamination. Mercury is a highly toxic pollutant that bioaccumulates and poses severe health hazards, especially to pregnant mothers and small children.⁹

Transportation of coal over long distances via rail also has significant environmental impacts, including the fossil fuel consumption of moving large volumes of material hundreds or thousands of miles. Data also shows that open coal trains lose huge volumes of coal dust during transportation.¹⁰ Such discharges would add to air quality problems along the rail route. According to BNSF studies, 500 to 2,000 lbs. of coal can be lost in the form of dust for each rail car; coal trains are typically composed of at least

⁷ Available at http://www.ipcc.ch/news_and_events/docs/ar5/press_release_ar5_wgi_en.pdf (last accessed on June 6, 2013)(emphasis in original).

⁸ T.C. Bond et al., *Bounding the role of black carbon in the climate system: A scientific assessment*, Journal of Geophysical Research: Atmospheres (online version Jan. 15, 2013) [Attachment B].

⁹ Jaffe, D. et al., “Atmospheric mercury from China,” *Atmos. Env’t.*, Vol. 39, 3029-38 (2005).

¹⁰ BNSF, Coal Dust FAQ, available at <http://www.bnsf.com/customers/what-can-i-ship/coal/coal-dust.html>.

120 cars per train. In other studies, again according to BNSF, as much as three percent of the coal in each car (around 3,600 lbs. per car) can be lost in the form of dust. Hearing Transcript, July 29, 2010, *Ar. Elec. Coop. Ass'n –Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, at 42:5 13 [Attachment C]. This is a large volume of coal that could escape into the air and water. Moreover, as with the GHG impacts, this analysis must be viewed in the context of all existing and reasonably foreseeable similar impacts.

iii. The EIR Must Consider All Impacts Cause by Construction and Operation of the Project.

Coal and petcoke exports from Long Beach Port will affect people and places beyond the immediate facilities at the Port. Every community located along the rail line between the coalmines and the Port will be harmed, and people outside California will be affected by the climate impacts of mining, transporting, and ultimately burning this coal. A proper CEQA analysis must consider all the impacts of the project, which include additional infrastructure expansion as well as the operation of transporting coal and other commodities. Additionally, the construction required to replace 126,560 square feet of asphalt must also be analyzed.

Affected rail communities might include Vernon, Los Angeles, Colton, Torrance, Las Vegas, Salt Lake City, and Denver among other communities.¹¹ As stated in our prior comment (June 9, 2014 Comment, at 18), the CEQA analysis must, of course, analyze the impacts of construction and operations at the site, but it also must analyze the impacts of coal trains and coal use on a much broader scale. This includes the direct, indirect, and cumulative impacts of coal export on public health, public safety, economics, marine health, public investment, and climate change.

To be clear, the CEQA analysis must examine the full direct, indirect, and cumulative impacts of the proposed project— from the mining of the coal in the Powder River Basin or Utah, Colorado, or New Mexico, the transport of coal by rail through several states and hundreds of communities, the loading and shipping of coal via large ocean vessels, to the burning of the coal in Asia.

¹¹ See, e.g., Burlington Northern Santa Fe Rail Map, (last accessed June 3, 2014), available at http://www.bnsf.com/customers/pdf/maps/coal_energy.pdf; see also Union Pacific Map, last accessed June 3, 2014, <http://www.uprr.com/customers/energy/ports/index.shtml>. See also Union Pacific Rail Map, accessed June 6, 2014, <http://www.uprr.com/customers/energy/coal/index.shtml> and <http://www.uprr.com/customers/energy/ports/index.shtml>.

iv. The Public Health Issues Raised by This Project, Which are Significant and Harmful, Must be Analyzed

As we pointed out in our prior comment (June 9, 2014 Comment, at 19), the public health issues raised by a project of this size and extent include increased air pollution from coal dust (mercury, arsenic, lead and uranium), diesel pollution over different operational lifetime projections for the terminal, soil contamination by coal dust, and increased noise. The Port has failed to analyze most of these impacts in its previous 1992 Negative Declaration, and has refused to analyze these impacts now. The CEQA analysis should include a specific focus on children, the elderly, and other vulnerable members of the community. It should also consider cumulative and disproportionate impacts on communities already exposed to high levels of air and water pollution, particularly low-income communities and communities of color. Any health impact analysis should take into account both the needs of communities potentially affected by the en-route trains and the site, as well as workers onsite who will be exposed at much higher levels.

a. The Project, Alone or in Combination With Other Existing and Future Development, Will Cause Harmful Air Impacts Which Must be Analyzed

Long Beach already suffers from some of the unhealthiest air in the region. As we articulated in our prior comment (June 9, 2014 Comment, at 19), air quality impacts and pollution from nitrogen dioxide (“NO₂”), particulate matter, sulfur dioxide, sulfuric acid mist, heavy metals and coal dust must be analyzed. NO₂ exposure can have a wide range of health impacts depending on the length of exposure and various other factors. Epidemiologic research establishes a plausible relationship between NO₂ exposures and adverse health effects ranging from the onset of respiratory symptoms to hospital admission. 76 Fed. Reg. 57105 at 57304; Environmental Protection Agency, Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (EPA/600/R-08/071), 5 -15.

Particulate matter (“PM”) refers to a broad class of diverse substances that exist as discrete particles of varying size. *See* 76 Fed. Reg. 57105 at 57302. Recent studies have found an increase in such particles that is higher from coal trains than other types of rail.¹² Such particles are produced by a variety of anthropogenic and natural sources, though most fine particles are produced by anthropogenic combustion and transformations of gas emissions, like NO_x, in the atmosphere. The composition of the particles can vary greatly and can remain in the atmosphere for weeks and disperse over thousands of miles. Depending on the size, these particles can be inhaled and penetrate the respiratory tract to cause significant adverse health effects. Coal dust contains many harmful components and causes health problems as people are exposed to fugitive coal dust from coal trains, coal storage piles, loading and unloading practices, emissions from

¹² Jaffe Research Group, Do Coal Trains Make Air Unhealthy (last accessed June 23, 2014), available at <http://www.atmos.washington.edu/jaffegroup/modules/APOLLO/>.

dust control systems, and risk of explosion and fire from coal dust. *See The Fire Below: Spontaneous Combustion in Coal*, U.S. Dep't of Energy (May 1993) [Attachment D]. Coal is a volatile and easily combustible material—other coal terminals have faced huge fires that pollute the air and put emergency responders and terminal staff at risk. *See* Attachment E (picture from a coal fire plant at an ill-fated coal terminal in Los Angeles). 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 GHGs.¹³ Although difficult to quantify, the study estimated that GHG emissions from spontaneous combustion of coal were likely around 3%.¹⁴

Neighborhoods living near existing coal export and barging terminals on the East Coast and Alaska document significant localized pollution, nuisance, and economic loss from coal dust. There is a considerable body of new literature that was not available in 1992 surrounding the risks of coal dust from facilities like this one that should be scrutinized carefully in the CEQA analysis. *See* Surface Transportation Board Decision, *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (Mar. 16, 2010) [Attachment F]. Ironically, much of this evidence was developed by BNSF in an effort to prevail in litigation against its efforts to require coal shippers to take additional measures to reduce dust losses. *See* Attachment G and Attachment H (BNSF Power Point on Coal).

Besides analyzing the potential detrimental effects on air quality that will arise from the export terminal itself, our previous comment (June 9, 2014 Comment, at 20) noted that a valid CEQA analysis must also consider the negative impacts that will arise from the mining of the coal, the required transport of coal from its source in Utah, Colorado, and/or the Powder River Basin to Long Beach, the burning of the coal, and the disposal of coal combustion waste. This is especially crucial considering the foreseeability of coal exports increasing at the Oxbow location. This process will affect air quality through a variety of manners. Mining of the coal and loading it onto trains creates significant particulate matter and NOx emissions from the explosives. The NOx emissions from the blasting are so significant that it creates visible clouds of pollution and forces warning signs to be placed near the mines. Transportation creates both the emissions from the diesel locomotives required to carry the coal, as well as the fugitive coal dust that will escape the freight cars along the way, as well as during loading and unloading on both ends of transport. These effects will have a significant impact on the ability of air quality control regions through which the trains will pass to meet the National Ambient Air Quality Standards, which are set in order to protect public health. In fact, no matter which route the trains take from the Powder River Basin, Utah or

¹³ Lesly Sloss, *Quantifying Emissions from Spontaneous Combustion*, (last accessed on June 6, 2014), available at http://www.worldcoal.com/news/coal/articles/Quantifying_emissions_from_spontaneous_combustion_227.aspx#.U5XbExsU-Uk.

¹⁴ *Id.*

Colorado to the export facility, they will pass through numerous nonattainment and maintenance areas for the criteria pollutants they will be emitting.

Further, a valid CEQA analysis must consider air pollution impacts that specifically accompany transporting and burning coal overseas. Each trip of a fully loaded Panamax container ship to China, for example, uses around 500 tons of bunker fuel per trip, generating both significant CO₂ emissions in its own right as well as a N₂O, NO_x, SO₂, sulfuric acid mist and a variety of other toxic and harmful air emissions, including diesel particulates that are highly damaging to human health, as well as black carbon, one of the most potent greenhouse pollutants in existence. *See* T.C. Bond et al., *Bounding the role of black carbon in the climate system: A scientific assessment*, Journal of Geophysical Research: Atmospheres (online version Jan. 15, 2013) [Attachment B]. Relatedly, to the extent shore power, or cold ironing, is not available, the CEQA analysis must consider idling ship emissions of cargo vessels at the terminal. The Port did not analyze these emissions in the 1992 Negative Declaration, and there is evidence that such emissions have been a significant source of toxic air pollution in other ports. *See* McCarthy, James, *Air Pollution and Greenhouse Gas Emissions*, Congressional Research Service (Dec. 23, 2009) [Attachment I]; Fried Axel et al., *Air Pollution and Greenhouse Gas Emissions from Ocean-Going Ships: Impacts, Mitigation Options and Opportunities for Managing Growth*, International Council on Clean Transportation (March 2007) [Attachment J]; and Scott Janea et al., *Protecting American Health from Global Shipping Pollution: Establishing An Emission Control Area in U.S. Waters*, Environmental Defense Fund (2009) [Attachment K].

Exporting coal may also increase the air-quality impacts associated with its combustion. When coal is burned domestically, we can be reasonably certain of the pollution-control regulations to which it will be subject. However, there is no guarantee that equivalent regulations will be in place in the countries where the exported coal will be sold and burned. As a result, the air pollution impacts of exporting American coal may be greater than if the coal were to be burned domestically. Yet these impacts will not stay in other countries. Airborne transport of soot, sulfur compounds, mercury, ozone, and other byproducts of coal combustion can travel across the Pacific Ocean and affect the health of western states' ecosystems and residents. *See* Place, Eric de, *Northwest Coal Exports: Some common questions about economics, health, and pollution* (Nov. 2011) at 7.¹⁵ These kinds of impacts are "indirect effects" of the shipment of coal and should be evaluated in the CEQA analysis along with any appropriate mitigation. To complete the lifecycle analysis, the impacts from fugitive particular matter and heavy metals from the transport and disposal of coal combustion waste must also be considered.

¹⁵ Available at <http://www.sightline.org/wp-content/uploads/downloads/2012/11/coal-FAQ-November-12.pdf>.

b. The Project Will Harm Water Resources, Which Must be Analyzed

The CEQA analysis must consider effects to all surface and ground water resources within the project area. As our prior comment explained (June 9, 2014 Comment, at 21), the CEQA analysis must consider all potential water quality impacts (e.g., increased sediment loads, possible spills, coal dust impacts, mercury deposition, changes to alluvial groundwater quality, degradation of drinking well water), and water quantity impacts (e.g., drawdown of aquifers, diversions or diminutions of surface flow, hydrologic changes affecting seeps and springs, drinking water impacts) of the project's construction and operation. The agencies should ensure that the CEQA analysis describes, in detail, the possible sources of all water needed for the railroad and associated mining activities, including water originating in any over-allocated water source.

The agencies also must consider cumulative water resource impacts flowing from reasonably foreseeable coal mines in the Powder River Basin or in Utah or Colorado (e.g., disruption of hydrologic systems, pollution impacts), as well as impacts to water resources that would be expected from burning the coal and disposal of coal combustion waste, whether domestically or overseas. In addition to water availability considerations, the CEQA analysis must examine the project's potential impacts to water quality. Contamination of river and drinking water supplies can occur with diesel emissions and diesel spills both during project construction and during the ongoing operation of the project, which relies on continuous activity of trains. In addition, drinking water supplies can become contaminated from coal dust and coal spills. Coal will be delivered in open top rail cars to the site. Regular movement of uncovered rail cars and the loading and unloading of these cars cause the release of fugitive coal dust, which can further contaminate the water supplies. Construction and operation of the railroad may also result in water quality impacts in the way of increased sedimentation and other changes. In addition, the possibility of spills of coal and heavy bunker oil in the San Pedro Bay after loading the coal onto ocean-going vessels must be analyzed. The CEQA analysis must assess these impacts and detail how federal, state, and local water quality standards will be met, monitored, and maintained.

c. Public Safety Will be Jeopardized by Construction and Operation of The Project

The impacts to public safety run the gamut from increased train traffic and vehicle accidents, increased derailments and concomitant emergency response, travel time delays at specific intersections (including the economic impacts of those delays, and impacts to/delay of emergency services (fire, police, EMT).

Our previous comment (June 9, 2014 Comment, at 22) noted that threats from frequent long trains at rail crossings all along the route from the source of the coal to the export terminal in Long Beach will mean delayed emergency medical service response

times; and increased accidents, traumatic injury and death. Each fully loaded train is long, and this proposal would significantly increase the daily number of trains along the rail route. These trains will bisect multiple communities along the route, leading to significant traffic delays and potential safety issues at grade-crossings. The delay of only a few minutes for an emergency response vehicle can mean the difference between life and death for citizens in these rural communities. In addition, increased rail traffic will lead to increased collisions between passenger vehicles, pedestrians, and trains; there are approximately 3,000 vehicle collisions with coal trains each year already, and 900 pedestrian accidents. *See* Daniel A. Lashof, et al., Natural Resources Defense Council, *Coal in a Changing Climate* (Feb. 2007) [Attachment L].

In addition to the threat of delay, our prior comment (June 9, 2014, Comment at 22) pointed out that the CEQA analysis must review the threats associated with coal train derailments. There were over 18 derailments of coal trains in the United States in the summer of 2012. In 2013 alone, there have been over 90 coal train-related incidents in the U.S. that include derailments, spills and other dumping, 36 of which were derailments.¹⁶ There is a serious risk to human health from a huge increase in coal train traffic along the route to and from the source of the coal and near the Long Beach export terminal. Even if Categorical Exemptions are deemed to apply, this increased threat of railroad accidents serves as “unusual circumstances” meriting addition analysis. *See* CEQA Guidelines § 15300.2.

Coal dust has also been shown to be a cause of rail bed instability and derailments, which can pose a significant public safety hazard. As the Surface Transportation Board (“STB”), which found coal dust to be “a pernicious ballast foulant,”¹⁷ acknowledged in its coal dust proceeding, the quantity of coal emitted by a train into the air, water and onto tracks is not insignificant.¹⁸ *See* Surface Transportation Board Decision, *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (Mar. 3, 2011) [Attachment M]. An average of 500 pounds of coal dust per rail car is lost during each trip. *See* BNSF Railway, *Coal Dust Frequently Asked Questions* (2011).¹⁹ Each train is composed of 120 cars or more. *See* Hearing, July 29, 2010, *Arkansas Electric Cooperative Association—Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305 at 42:5-13. The risk of train

¹⁶ As of November 4, 2013. *See* National Response Center Database, available at http://www.nrc.uscg.mil/default.asp?p=109:2:9481443649338;pg_R_1810817102655439:NO&pg_min_row=81&pg_max_rows=20&pg_rows_fetched=2. Database temporarily offline and raw data available at <http://cgmix.uscg.mil/NRC/> or via the Freedom of Information Act (FOIA).

¹⁷ Also available at <http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/40436?OpenDocument>.

¹⁸ The STB has conducted two proceedings related to coal dust, referenced at Docket numbers 35557 and 35305. *See* <http://www.stb.dot.gov/newsrels.nsf/219d1aee5889780b85256e59005edefe/72355569b86fcf0485257950006d6966?OpenDocument>.

¹⁹ Copy on file with Earthjustice. BNSF website has been taken down but a copy of the webpage is available at <http://www.coaltrainfacts.org/docs/BNSF-Coal-Dust-FAQs1.pdf>.

derailments is heightened on lines with heavy coal-train traffic. “Coal dust, even in small amounts, poses a real threat to the integrity of the ballast section and track stability.” *Id.* at 46:18-20. *See* Surface Transportation Board Hearing Transcript (STB Hearing Transcript), Re: *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (July 29, 2010) [Attachment C].

Right of way fires on the land of property owners along rail lines with coal trains are also a known safety and economic risk that must be analyzed.²⁰ Last year, several coal-related fires occurred along a railway in North Dakota.²¹ Coal dust lodged in the ballast, and from constantly passing coal trains, kept the track fires smoldering for several days. As South Heart Fire Chief said, “When there is that much coal dust, there is not a lot we can do...you think you have it out...and then half-a-day later, it flares up once again.”²²

The CEQA analysis’ assessment of coal dust should include a discussion of the efficacy of surfactants to control coal dust, as our prior comment (June 9, 2014 Comment, at 23) elaborated on. The CEQA analysis should further discuss the potential impacts of the use of surfactants to control dust emissions as well as consequences from not using surfactants. First, although use of surfactants in some contexts is common, their efficacy and safety for use on coal-carrying trains is unproven. The oft-claimed 85% control efficiency has been called “junk science” by coal shippers. Topping agents wear off along the route, are themselves pollutants, and can even possibly increase the amount of coal lost due to saltation. *See* Phyllis Fox, *Fugitive Particulate Matter Emissions from Coal Train Staging at the Proposed Coyote Island Terminal*, July 19, 2013 [Attachment N].

Second, surfactants contain myriad undisclosed chemicals, many of whose biological and ecological effects have not yet been adequately studied. Surfactants could cause a number of potential harms, including: danger to human health during and after application; surface, groundwater, and soil contamination; air pollution; changes in hydrologic characteristics of the soils; and impacts on native flora and fauna populations.²³

Third, while BNSF has a voluntary tariff encouraging the use of surfactants for Powder River Basin coal, this tariff would not apply to areas outside the Powder River Basin, such as the Utah or Colorado coal shipped to Long Beach for export. In the

²⁰ *See* Hearing Transcript, July 29, 2010, *Arkansas Electric Cooperative Association – Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, at Tr. 69: 7-10.

²¹ *Coal Dust Keeps South Heart Fire Crews Busy*, The Dickinson Press, September 1, 2012, available at

<http://www.thedickinsonpress.com/content/coal-dust-keeps-south-heart-fire-crews-busy>.

²² *Id.*

²³ Environmental Protection Agency, *Potential Environmental Impacts of Dust Suppressants: Avoiding Another Times Beach* § 3 (May 30-31, 2002), available at

<http://www.epa.gov/esd/cmb/pdf/dust.pdf>.

absence of binding regulation, many coal companies are electing not to apply any sort of topping agent. *See Some shippers not complying with industry's coal dust tariff*, Platts Energy Week, Nov. 3, 2011 [Attachment O]. As a result, the use of surfactants is not certain, and so the analysis of the impact of coal dust must consider scenarios both without and with any sort of surfactant use. Furthermore, the coal dust emitted by trains is contaminating waterways. Washington state groups, including the Sierra Club and NRDC, have filed a Clean Water Act suit based on coal and petcoke contamination of Washington's rivers and streams from the open top rail cars transporting these commodities.²⁴

v. The Overall Economic Impacts of Coal Exports are Likely Negative.

The CEQA analysis must further review the economic impacts of this project. As outlined in our prior comment (June 9, 2014 Comment, at 25), issues here include the impact of increases in coal train traffic on real estate values and damage to property from coal dust, diesel emissions, vibration, and noise. There are also serious concerns relating to the impact of an increase in coal rail traffic on other non-coal shippers of freight by rail, including ports and shippers of agricultural products. These same issues may affect passenger rail interests. These significant rail traffic increases are likely to create major impacts on communities affected by vehicle traffic problems related to delays at non-grade separated railway crossings, which will affect non-rail freight mobility, access to ports, retailers, tourist centers, and employers. On the marine side, there are likely to be significant economic impacts on marine dependent industries, such as commercial fisheries and shellfish growers, tourism, and other businesses.

a. The Project, Individually and In Combination With Other Proposed Projects, Threaten Increases In Rail Traffic For A Single Commodity, With Major Impacts On Other Rail Users And Affected Communities.

The increased rail traffic associated with shipping unknown quantities of coal per year to Long Beach could represent a huge increase in freight rail usage and would likely present significant conflicts with other users of the rail line, including freight and passenger shippers. As we explicitly mentioned in the comment we submitted (June 9, 2014 Comment, at 25), it is critical that the CEQA analysis include a full analysis of the cumulative impacts from this proposal combined with other coal, petcoke and oil export and refining proposals in the region, including the capacity of the rail system to handle these increases without significant adverse impacts on other shippers, passenger rail users, and communities. Moreover, the Port should consider any trucking impacts related to transport of petcoke to the export facility.

²⁴ BNSF Railway, coal shippers sued in federal court for water contamination violations, <http://content.sierraclub.org/environmentallaw/lawsuit/2013/bnsf-railways-coal-shippers-sued-federal-court-water-contamination-violations> and <http://content.sierraclub.org/tags/bnsf> (accessed June 6, 2014).

Unless mitigated with significant capacity additions, increases of coal train traffic is likely to present significant adverse impacts on other users of the rail line, including grain and fruit shippers, intermodal users, ports, industries, aircraft manufacturers and passenger rail—all of whom are critically dependent on timely and affordable access to the rail system. Existing studies from the Northwest indicate that coal rail traffic is already having a significant negative impact on the ability of Washington State shippers to access markets where coal traffic from the Powder River Basin is dominating the rail lines; experts working for that State have concluded that “the high volume of coal trains moving east out of the Powder River Basin has made it virtually impossible to route time-sensitive intermodal trains moving from Pacific Northwest ports to central and southeast gateways such as Kansas City and Memphis through the near continuous flow of slow-moving coal trains. *See Heavy Traffic Ahead: Rail Impacts of Powder Basin Coal to Asia by Way of Pacific Northwest Terminals*, Western Organization of Resource Councils (July 2012) [Attachment P].

Adjusting to this report, BNSF has shifted most intermodal traffic destined to locations south of Chicago to the Ports of Los Angeles and Long Beach.”²⁵ These reports also confirm that the railroad prioritizes unit trains, such as coal trains, over other shippers. The CEQA analysis should fully analyze the impacts on other types of shippers if inbound and outbound freight or passenger rail traffic is diverted or eliminated due to the competition with coal trains, such as agricultural products. Further, the EIR should look at impacts related to diversion of this freight rail traffic to other modes, including trucks and barges.

The CEQA analysis must also analyze impacts, mitigation measures and potential funding relating to the use of passenger rail on these same lines. The CEQA analysis must analyze how existing and expanded passenger rail uses will be impacted if freight traffic increases. The CEQA analysis should further consider existing and prospective public funding for rail capacity to purchase passenger rail service.²⁶ The CEQA analysis should include all needed capacity improvements that will be required to address at least those areas where the planned coal train traffic will exceed the capacity of the existing system.

²⁵ Communitywise Bellingham, Annotated Bibliography with Key Extracted Pages Studies Relevant to Rail Related Public Policy Concerns Community Impacts, Local Business Impacts, Lack of BNSF Cost Sharing, available at <http://www.communitywisebellingham.org/wp-content/uploads/2012/05/CWB-WSDOT-Public-Policy-Concerns-Report.pdf>.

²⁶ See Sightline, January 2013, *Who Pays for Freight Rail Upgrades?*, available at <http://daily.sightline.org/2013/01/18/who-pays-for-freight-railway-upgrades/>.

b. The Project is Likely to Create Very Significant Impacts Relating to Rail Traffic in Dozens of Impacted Communities.

Our prior comment (June 9, 2014 Comment, at 26) mentioned that increases in freight rail traffic for coal export could result in significant adverse impacts on other traffic and freight mobility within affected communities. *See Heavy Traffic Ahead: Rail Impacts of Powder Basin Coal to Asia by Way of Pacific Northwest Terminals*, Western Organization of Resource Councils (July 2012) [Attachment P]. These traffic impacts cause direct economic losses to affected communities and businesses through interruptions of freight mobility, challenges for customers reaching businesses, and lost employee time. Air pollution impacts related to increased idling and congestion may also directly impact growth in affected communities. It is imperative that the CEQA analysis fully examine these issues in all communities that are likely to be similarly affected along the entire corridor from the source of the coal to the Long Beach export terminal.

Finally, it is particularly critical that the evaluation of rail impacts be placed in the context of cumulative effects from multiple projects currently under consideration that will dramatically raise the amount of train traffic in California. In addition to the other coal export terminals that will in part use the same lines as this one, there are numerous proposals to increase the amount of crude oil travelling by rail in California.²⁷ Together, these projects will add toxic and dangerous crude oil shipments to the already overcrowded rail lines. The CEQA analysis should evaluate the direct, indirect, and cumulative impacts of reasonably foreseeable projects, including crude oil, coal export, and liquefied natural gas terminals in California. This includes the cumulative impacts associated with rail traffic, vessel traffic, and associate pollution and public health impacts.

c. Coal Exports Threaten Nearby Property Valuations, Which Must be Analyzed

As relied upon in our prior comment (June 9, 2014 Comment, at 27) recent studies have indicated that increases in coal train traffic induced by agreements may directly result in significant reductions in property values, affecting owners, other taxpayers, and affected communities. *See Increased Coal Train Traffic and Real Estate Values*, The Eastman Company (Oct. 30, 2012) [Attachment Q]; Robert A. Simons, A. El Jaouhari, *The Effect of Freight Railroad Tracks and Train Activity on Residential Property Values*, (Summer 2004) [Attachment R]; Futch, M., *Examining the Spatial*

²⁷ See, e.g., <http://www.reuters.com/article/2013/11/07/tesoro-rail-crude-idUSL2N0IS13N20131107> (“U.S. refiner Tesoro Corp has tripled the amount of North Dakota Bakken oil delivered by crude-only trains to its northern California refinery since the first such shipment in September”) (last visited on June 6, 2013); <http://www.mysanantonio.com/business/article/Moving-crude-by-rail-works-for-refiners-4547720.php> (“Valero hopes to have approval soon from local officials to ship North American crude by rail to its Benicia plant in Northern California and complete the project by year’s end.”) (last visited on June 6, 2014).

Distribution of Externalities: Freight Rail Traffic and Home Values in Los Angeles (Nov. 11, 2011) [Attachment S]. A study conducted by the Eastman Company (property valuation experts and consultants) relevant to the GPT in Whatcom County in Washington concludes that property valuation losses are likely to be significant for properties located within 500 feet of the mainline tracks in Whatcom, Skagit, Snohomish, King, and Pierce Counties, due to the impacts related to traffic, safety, vibration, noise, pollution, and stigma and perception issues. For example, the study found that single-family residential properties north of Everett could lose values in the range of 5-20%. Other estimates included multi-family properties (5-15%); commercial properties (5-10%); and industrial properties (5-8%). Using a database of assessed property values in the study area, the Eastman report concluded that even a 1% diminution in property value would result in a loss of approximately \$265 million. A similar study for the City of Seattle showed potential property value losses of up to half a billion dollars. *See* Attachment T (CAI OED Report). While we are not yet aware of any comparable study for Long Beach, it is clear that a substantial increase in rail traffic has important impacts that need to be assessed. The EIR should look at these issues along the entire corridor, using specific estimates of rail traffic associated with the project, as well as the cumulative impacts of other coal export facilities and proposed crude-by-rail.

d. There will be Negative Impacts on Economies Dependent on the Marine Environment.

There are likely to be significant adverse impacts and major risks posed to the San Pedro Bay aquatic ecosystem from this project. In addition to the impacts on ecosystems and to those who fish in the Santa Monica Bay for sport and food, these issues must be evaluated for the impacts and risks that they pose for marine related businesses and economies, including tourism and other related businesses. These businesses cumulatively provide significant amounts of revenue in positive economic impacts to the state and region. Impacts to other forms of recreation, e.g., boating, hiking, birding, should be closely analyzed.

vi. The CEQA Analysis Must Analyze Harm to Wildlife, Marine, and Aquatic Health.

As our prior comment thoroughly explained (June 9, 2014 Comment, at 28), the CEQA analysis must include an analysis of coal export-related impacts to biological, marine, and aquatic resources on both public and private lands and waters in the affected area, that is, in the area from the mining of the coal in the Powder River Basin (or Utah or Colorado), through the rail corridor to the project, through the loading and shipping of the coal through the Long Beach Port and surrounding waters, to its final destination and combustion in Asia. Such resources include marine and terrestrial mammals, game and non-game resident and migratory bird species, raptors, songbirds, amphibians, reptiles, fisheries, aquatic invertebrates, wetlands, and vegetative communities. The agencies must ensure that up-to-date information on all potentially impacted flora and fauna is made available, so that adequate impact analyses can be completed. Habitat degradation,

fragmentation, and loss must all be assessed, along with any resulting impacts to wildlife and marine species.

Stormwater is another critical concern, given the toxicity of the material being shipped, and the historic contamination of this site. The San Pedro Bay is already listed as impaired under the state's § 303(d) list, and under Ninth Circuit precedent, any additional discharge to such impaired water bodies is prohibited. Increased wildlife mortality from railroad and mining related activity (including, but not limited to, increased human conflicts, habitat loss, and increased hunting pressure) must also be discussed. Impacts to wildlife migration corridors must be evaluated.

Increased shipping traffic brings with it an increased risk of collisions, groundings, spills, discharges, and accidents during vessel fueling. For instance, the devastating Cosco Busan spill in the San Francisco Bay just a few years ago could become a more common occurrence.²⁸ Similarly, the potential for introduction of invasive species, including through ballast water, must be assessed, as tens of thousands of cubic meters of ballast water per visit will be discharged by the shipping vessels. Hull fouling presents a similar danger of invasive species introduction. All of these risks and impacts must be carefully scrutinized. And, it is particularly important for the agencies to evaluate increases in vessel traffic in the context of the cumulative impacts from multiple current and reasonably foreseeable fossil fuel-related projects.

IV. The CEQA Analysis Must Analyze a Reasonable Range of Alternatives, Including Phasing Out Fossil Fuel Exports

A proper CEQA analysis requires that the lead agency discuss a reasonable range of alternatives. CEQA Guidelines § 15126.6(a). As we clearly pointed out in our prior comment (June 9, 2014 Comment, at 28), the Port must analyze a reasonable range of alternatives before approving the new operating agreement and lease. The Port has refused to analyze any alternatives, subverting the purpose of CEQA. The analysis of alternatives lies at “the core of an EIR.” *See Citizens of Goleta Valley v Board of Supervisors*, 52 Cal. 3d 553 at 564; *see also* Pub. Res. Code § 21002.1(a). In this analysis, the CEQA analysis must consider a reasonable range of alternatives that would avoid or substantially lessen this impact while feasibly attaining most of the Project's basic objectives. *See* § 21100(b)(4); CEQA Guidelines § 15126.6(a). The purpose of this analysis is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. *See Citizens of Goleta Valley*, 52 Cal.3d 553 at 564.

The EIR “protects not only the environment but also informed self-government.” *Id.* If the lead agency refuses to consider a reasonable range of alternatives or fails to

²⁸ *See, e.g.*, <http://www.fws.gov/contaminants/documents/coscobusan.pdf>. The Cosco Busan cargo ship hit the Bay Bridge in heavy fog in 2007, resulting in the worst spill in the San Francisco Bay for 20 years, and significant fish and bird kills.

support its analysis with substantial evidence, the purposes of CEQA are subverted. *See San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal. App. 4th 713 at 735-38. If a feasible alternative exists that will meet the project's objectives while reducing or avoiding its significant environmental impacts, the project may not be approved. *See* Pub. Res. Code § 21002. In addition to the need for thorough consideration of the impacts of permitting fossil fuel exports, the CEQA analysis must consider the option of not including fossil fuel exports out of Long Beach. Here, the lack of a CEQA analysis has curtailed options for alternatives to the current effort to encourage greater levels of coal export.

V. Analysis of Important Mitigation Measures has been Curtailed by this Failure to Analyze Impacts

The Port now has an opportunity to help “Green” the Port by minimizing impacts of coal exports, but minimizing those impacts requires an environmental analysis. In our prior comment (June 9, 2014 Comment, at 29), we brought to the Port's attention several important mitigation measures that could serve to make this project more sustainable, including covering the rail cars and funds for GHG mitigation. Mitigation of a project's significant impacts is one of the “most important” functions of CEQA. *See Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). If the EIR is the heart of CEQA, then mitigation is its teeth. *See Env'tl. Council of Sacramento v. City of Sacramento*, 142 Cal.App.4th 108 at 1039. Under CEQA, feasible mitigation measures must be adopted that will avoid or substantially lessen significant environmental effects. Pub. Res. Code § 21002. CEQA is clear that “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding agreements.” CEQA Guidelines § 15126.5(a)(2).

While we are appreciative that the Port is requiring some electric vehicles and more efficient lighting, this mitigation does not address the scope of the impacts associated with this terminal. In particular, the CEQA analysis needs to explore requiring covers for the rail cars. In addition, the Port should mitigate the impacts from this facility through contributions to its community GHG mitigation program. Exporting and transporting a minimum of 1.7 million MT of coal per year will have significant GHG emissions, which must be analyzed and mitigated. The Port has not analyzed its current GHG emissions, and without that analysis, it is impossible to develop enforceable mitigation measures. CEQA requires that an “EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects to be considered in the full environmental context.” CEQA Guidelines, § 15125(c).

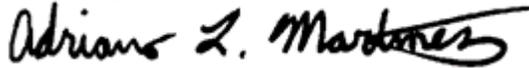
VI. Conclusion

NRDC, CBE, and Sierra Club raised all of these issues before the Board of Harbor Commissioners. These organizations have attached all the letters and attachments

filed related to this appeal. We respectfully request that this information be incorporated into the record for this appeal.

Thank you for your consideration of this appeal. As you are no doubt aware, there is great public interest in the shipment of products like petcoke and coal out of the Port; the harmful impacts caused by the proposed expansion of coal exports will occur at the local, regional, and global scale; and the relevant state laws emphasize a thorough, up-front review of all the environmental effects of proposed actions. We reiterate our request for a full EIR for the action under CEQA. We look forward to working with the City and the Port in the development of an Initial Study and EIR that actually looks at the full direct, indirect, and cumulative impacts of the proposed project. We have included the address for all parties and counsel below to receive communications regarding this appeal.

Sincerely,



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