



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2015 SEP 11 PM 12: 22

AGENDA REPORT

TO: Sabrina B. Landreth
CITY ADMINISTRATOR

FROM: Claudia Cappio

SUBJECT: Coal's Public Health and/or Safety Impacts **DATE:** September 10, 2015

City Administrator
Approval

Date

9/11/15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council:

Conduct a public hearing to receive information, testimony and other evidence, oral or in writing, regarding the types of coal products that are transported, the public health and/or safety impacts, and other impacts, of the transportation, transloading, handling and/or export of those products in/through the City of Oakland, the adequacy of existing regulations, and the City's ability to regulate the transportation and handling of such products, in part, as a follow-up to Resolution No. 85054 C.M.S. (Resolution Opposing the Transportation of Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, and Petroleum Coke, Through the City Of Oakland; adopted on June 17, 2014).

EXECUTIVE SUMMARY

On June 17, 2014, the Oakland City Council adopted Resolution No. 850454 C.M.S., Opposing the Transportation of Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, and Petroleum Coke, through the City of Oakland, **Attachment A**. As a follow-up to the Resolution and more recent concerns raised by community stakeholders with respect to a portion of the Oakland Army Base Project in particular, the City Council agreed to hold an informational public hearing to receive written and oral testimony to help inform potential future Council actions. It is the intent of the Council to obtain more information about the potential impacts to health and safety as the result of the transport and handling of coal.

OUTCOME

Based upon the information, testimony and other evidence obtained from the public hearing process, the City Administrator requests that the Council direct staff to return to the City Council with one or more of the following: (a) summarize the testimony; (b) conduct additional research, including hiring an expert(s) to weigh in on particular issues and provide a recommendation; and/or (c) evaluate options for binding measures through contract or regulation.

Item: _____
City Council
September 21, 2015

BACKGROUND/LEGISLATIVE HISTORY

2014 City Council Resolution. On June 17, 2014 the City Council adopted Resolution No. 85054 C.M.S. (Resolution Opposing the Transportation of Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, And Petroleum Coke, Through the City Of Oakland; **Attachment A**).

The Resolution adopted findings and directed the City Administrator or his/her designee to, among other things:

- “Address impacts to public health, safety, property, air quality and surface and groundwater caused by the transport of coal, petroleum coke . . . through Oakland by actively enforcing applicable local public health, safety . . . codes and by actively enforcing applicable federal environmental statutes delegated to Oakland;” and
- “Submit a letter to rail carriers involved in the transport of . . . coal, and petcoke in California requesting: . . . that the rail carriers provide representatives to meet periodically with local citizen groups and local government officials from Oakland to seek mutually acceptable ways to address local concerns.”

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

Previous City Actions Pertaining to the Oakland Army Base. Prior to adopting the June, 2014 Resolution, in June 2012 and July 2013, the City approved various agreements related to the redevelopment of the Army Base. These included approval of private improvements for a rail-served bulk commodities marine terminal (“Break Bulk Terminal”). The public and private improvements supporting the Break Bulk Terminal and other Trade and Logistics activity at the Army Base are currently under construction.

Environmental Review. The Break Bulk Terminal is a component of the overall former Army Base redevelopment, which was master planned during 2010-11 and approved, based on a completed California Environmental Quality Act (“CEQA”) Addendum in 2012.

Major Components of the Army Base Redevelopment. For purposes of the discussion of coal, the major components of the Army Base redevelopment include: (1) the private development of the Break Bulk Terminal, (2) the City and Port development of public infrastructure pursuant to a

construction grant from the California Transportation Commission for \$242 Million (TCIF), which is funding the City's public infrastructure and Port of Oakland rail yards, both currently underway, (3) a Lease Disposition and Development Agreement ("LDDA"), which set out the terms of both City and Developer obligations to meet specific public improvement delivery timelines for Developer takedown and construction of private improvements prior to June 2020, and (4) a Development Agreement ("DA"), which vested the rights to develop, among other things, the Break Bulk Terminal on the West Gateway, subject to a narrow exception for certain later-enacted health and/or safety regulations.¹

Based on the LDDA and DA, the City Ground Lessee for the West Gateway (CCIG) has entered into an option agreement to sublease the West Gateway to the entity, TLS, for development and operation of the Break Bulk Terminal. TLS is currently designing the terminal and seeking financing for what has been described as a \$250M commodities export terminal facility. In accordance with the July 15, 2015 letter to Mayor Schaaf ("TLS Letter" **Attachment C**), TLS has indicated it may seek to transport coal by covered rail cars to the Break Bulk Terminal for export to foreign countries. Specifically, "TLS proposes to build and operate its marine Terminal to receive multiple commodities from various parts of the western United States via single rail line services To be economically viable, we must be able to transload raw materials such as corn, soy beans, borax, iron ore, pot ash, soda ash and yes, coal."

DISCUSSION

The purpose of this informational public hearing is to receive written or oral testimony and other evidence regarding: 1) Health and safety impacts and /or other impacts of the transportation, transloading, handling and/or export of coal and/or coal products in and through the City of Oakland, 2) The adequacy of existing regulations, and 3) The City's ability to regulate the transportation and handling of such products. The following section provides some reference points for this discussion.

¹ The DA between the City and CCIG provides vested rights to CCIG to operate the Break Bulk Terminal subject to the "laws on the books" at the time the DA was approved, with limited exceptions. The most relevant exception to vested rights is DA section 3.4.2 which authorizes the City to adopt regulations that would bind the Break Bulk Terminal if the regulations are related to health and/or safety. (A copy of DA section 3.4.2 in its entirety as **Attachment B**.) Specifically, the DA creates a two part test to determine if the adoption of a health and/or safety regulation is permissible. First, the regulation must be permissible under federal and state constitutions, statutes, and laws. Second, the City must determine "based on substantial evidence and after a public hearing that a failure to [adopt the ordinance] would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety." Unless the City meets both of the aforementioned criteria, the Break Bulk Terminal will be governed by the rules and regulations that existed when the DA was executed.

During the past several weeks, the City has received correspondence and other information both in opposition to and in support of the transportation and handling of coal at the Oakland Army Base. Links to this information are provided in the last section of this staff report and may also be reviewed at the City Clerk's office during regular business hours. This information includes a packet of material that TLS provided about the preliminary design of the proposed Break Bulk Terminal and information about operations and procedures for handling commodities. Such information may also be useful in understanding the specific context and circumstances of how commodities will be transported and managed through the new Terminal.

Additionally, consistent with the Oakland Army Base DA Section 3.4.2, the City is receiving public testimony and other evidence regarding any health and/or safety conditions related to the potential handling of coal at the Oakland Army Base and whether such conditions are demonstrated to be substantially dangerous to future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them. After reviewing all the testimony and other submitted evidence, the City Council may then choose to consider adopting new regulations that mitigate or reduce any demonstrated substantially dangerous health and/or safety impacts.

The following outline of possible topics and issues provides guidance, but in no way limits, how the discussion may be focused.

A. Federal Preemption

- 1) Rail
- 2) Maritime

B. Types of Coal and Specific Hazardous/Nonhazardous Characteristics of Each

- 1) Lignite
- 2) Subbituminous
- 3) Bituminous
- 4) Antracite
- 5) Petcoke

C. Health and/or Safety (to existing or future workers, neighbors, occupants, etc.) Impacts of each Coal Product Relating to:

- 1) Rail transport
- 2) Maritime transport
- 3) Transloading/Handling

D. Use of Health and Safety Rankings to determine degree of risk:

- 1) Impact of using a ranking system to understand health and safety risk of commodities, like the National Fire Protection Association (NFPA) 704 Material Hazards for Emergency Response index, which rates the health risks and fire risks for commodities on a scale from 0 – 4. There are also ratings for the two categories of reactivity and other dangers, although few bulk and oversized commodities score a rating above zero (0) for reactivity and generally do not have any rating for other dangers.
- 2) Identification of other ranking systems which are generally recognizable and available.

E. Extent to which Existing Federal, State, Regional and/or Local Regulations Adequately Protect Health and/or Safety

- 1) Laws related to the Export of Fossil Fuels
- 2) Bay Area Air Quality Management District (BAAQMD) laws and regulations
- 3) Occupational Safety & Health Administration (OSHA) laws and regulations
- 4) Specific to the Army Base Redevelopment efforts, the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MMRP). These can be found through the following link:
<http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009158>

F. Extent of Protective Measures and Enforceability at the Army Base

The TLS Letter indicates the coal TLS is considering handling through the Break Bulk Terminal is bituminous coal. It is a commodity that has a NFPA rating of one (1) for health risks and a rating of one (1) for fire risks as there are no reactivity or low fire risks associated with that commodity.

In addition to the SCA/MMRP measures, TLS proposes a number of “protective measures” to limit the impacts of coal. As noted, TLS recently submitted detailed information about preliminary design and operation of the proposed Break Bulk Terminal and this information is available for review.

PUBLIC OUTREACH/INTEREST

City staff has met with West Oakland community groups about their concerns pertaining to the transport and handling of coal at the Army Base. As noted, the City has also received correspondence and other information during the past several weeks and this material is provided in a series of links in this staff report as well as being available in hard copy in the City Clerk's office during regular business hours.

For questions regarding this report, please contact Doug Cole, Project Manager, at (510) 238-3684.

Respectfully Submitted,



Claudia Cappio
Assistant City Administrator

Attachments:

- A. Resolution No. 85054 C.M.S. (and accompanying City Council Agenda Report)
- B. Army Base Development Agreement Section 3.4.2
- C. TLS letter dated July 15, 2015

Links to correspondence and information received:

- Letter from CCIG Rep: <http://www2.oaklandnet.com/w/oak054816>
- Letters of Opposition: <http://www2.oaklandnet.com/w/oak054814>
- Letters of Support: <http://www2.oaklandnet.com/w/oak054815>
- TLS Cover Letter: <http://www2.oaklandnet.com/w/oak054817>
- TLS Preliminary Operating Plan: <http://www2.oaklandnet.com/w/oak054818>
- TLS Basis of Design - Intro thru Section 3: <http://www2.oaklandnet.com/w/oak054820>
- TLS Basis of Design - Section 4: <http://www2.oaklandnet.com/w/oak054821>
- TLS Basis of Design - Sections 5 & 6: <http://www2.oaklandnet.com/w/oak054822>
- TLS Basis of Design - Section 7a: <http://www2.oaklandnet.com/w/oak054823>
- TLS Basis of Design - Section 7b: <http://www2.oaklandnet.com/w/oak054824>

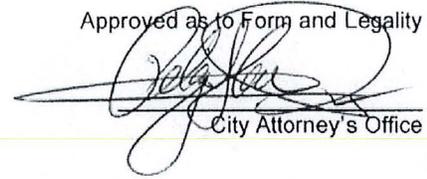
Item: _____
City Council
September 21, 2015

- TLS Basis of Design - Section 8: <http://www2.oaklandnet.com/w/oak054825>
- TLS Basis of Design - Section 9 & 10: <http://www2.oaklandnet.com/w/oak054826>
- TLS Basis of Design - Sections 11 thru 13: <http://www2.oaklandnet.com/w/oak054827>
- TLS Basis of Design - Sections 14 & 15: <http://www2.oaklandnet.com/w/oak054828>
- TLS Basis of Design - Sections 16 thru 18: <http://www2.oaklandnet.com/w/oak054829>
- TLS Basis of Design - Sections 19a: <http://www2.oaklandnet.com/w/oak054830>
- TLS Basis of Design - Sections 19b: <http://www2.oaklandnet.com/w/oak054831>
- TLS Basis of Design – Sections 19c: <http://www2.oaklandnet.com/w/oak054832>
- TLS Basis of Design – Appendix: <http://www2.oaklandnet.com/w/oak054819>

ATTACHMENT A

14 MAY 29 PM 4:52

Approved as to Form and Legality



City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. 85054 C.M.S.

INTRODUCED BY COUNCILMEMBERS Kalb, Gibson McElhaney and Kaplan

RESOLUTION TO OPPOSE TRANSPORTATION OF HAZARDOUS FOSSIL FUEL MATERIALS, INCLUDING CRUDE OIL, COAL, AND PETROLEUM COKE, ALONG CALIFORNIA WATERWAYS, THROUGH DENSELY POPULATED AREAS, THROUGH THE CITY OF OAKLAND

WHEREAS, there is a new push by the fossil fuel industry to transport, export, and/or refine coal, crude oil and petroleum coke ("petcoke")—a byproduct of oil refining—on the West Coast and in California; and

WHEREAS, California refineries are in the process of securing permits to build rail terminals to import Canadian tar sands and Bakken crude oils from North Dakota, and existing rail terminals are securing permits to import tar sands and crude oil without public notice or CEQA review; and

WHEREAS, other refineries have similar projects planned to transport hazardous crude by rail through Oakland and other East Bay cities; and

WHEREAS, California public and private Ports are in the process of securing permits to build or expand export facilities for coal and petcoke; and

WHEREAS, the California Assembly passed, and Governor Brown signed, Assembly Joint Resolution No. 35 in September 2012 urging the President and Congress to enact legislation to restrict the export of coal for electricity generation to any nation that fails to adopt regulations on greenhouse gas emissions or hazardous air emissions that are at least as restrictive as those adopted by the U.S.; and

WHEREAS, New York Governor Andrew Cuomo also recognized the risk of transporting volatile crude by rail by passing Executive Order #125 directing New York state agencies to conduct a comprehensive review of crude rail transport safety procedures and emergency response preparedness and Albany County, NY, issued a moratorium on crude increases at the Port of Albany pending a public health investigation. In California, the cities of Berkeley and Richmond have passed resolutions concerning the safety of transporting crude by rail; and

WHEREAS, in Washington and Oregon, 27 communities have passed resolutions against coal transport and export, and hundreds of other public officials, including Governors Inslee and Kitzhaber, state and federal agencies, tribes, health entities, religious leaders and other community leaders, have recognized the harms of coal by making statements of concern

about coal transport and export. The State of Washington Department of Ecology, through its SEPA process, is requiring a comprehensive cumulative impacts analysis of proposed coal export facilities and rail transport from mine to port to plant spanning the Powder River Basin to Asia for the proposed Longview and Bellingham coal export facilities; and

WHEREAS, in Illinois, the State Attorney General, Governor and Chicago mayor are pursuing new legislation to better regulate petcoke storage or to ban new facilities due to residents' concerns about dust and health impacts; and

WHEREAS, the last few years have seen a dramatic rise in transport of crude by rail nationwide – the volume of crude by rail shipments in Northern California increased by 50 percent last year alone—accompanied by a similar rise in accidents, nearly 100 in 2013. More crude oil was spilled in U.S. rail accidents in 2013 than in the preceding four decades, amounting to more than 1.15 million gallons in 2013. In July 2013, 72 tanker cars loaded with 2 million gallons of flammable crude oil derailed in Lac-Mégantic, Canada, causing explosions that destroyed dozens of buildings, killed 47 people, and caused over \$1 billion in damages; and

WHEREAS, coal and petcoke are commonly transported via open-top rail cars and a large volume of those materials escape during transit. According to the BNSF Railway, each coal car in a 125-car coal train loses, on average, 500 pounds of coal per car in transit, for a total of up to 60,000 lbs lost per train on an average trip. Uncovered rail cars contaminate cities, towns, farmland, forestland, streams and rivers across California with coal dust, petcoke and chunks of coal; and

WHEREAS, a federal Surface Transportation Board proceeding regarding the transportation of coal by rail found that coal dust is a "pernicious ballast foulant" that can destabilize rail tracks and can contribute to train derailments, and between July 2012-2013, at least 40 coal trains in the U.S. derailed, causing four victims to lose their lives, large amounts of coal to spill, major delay to other rail users, and significant costs to repair the damage; and

WHEREAS, coal from the Powder River basin is explosive, and the transportation of coal in open rail cars and accumulation of coal on or near rail lines has been known to create public safety hazards, including train derailments, explosions and fires; and

WHEREAS, the National Transportation Safety Board and the Pipeline and Hazardous Materials Safety Administration recently acknowledged the failure to appropriately classify the contents of crude oil shipments to reflect the hazardous and highly flammable nature of the substances being transported by rail and the devastating consequences of a crude oil rail accident including loss of life, property and environmental damage, and thus made recommendations to avoid urban areas when transporting crude, and to improve rail safety regulations for crude oil transport, including worse-case scenario emergency response plans; and

WHEREAS, new coal and petcoke export terminals and crude by rail operations are expected to result in a massive increase in train traffic in California, causing concerns about blocked roads inhibiting the travel of emergency vehicles, pedestrians, access to waterways near the rail lines for fishing and other recreational use, and other vehicle traffic, and potentially catastrophic train derailments; and

WHEREAS, increased rail traffic in California from coal, petcoke and crude oil will lead to an increase in diesel emissions in communities along rail lines, and exposure to particulate

matter from diesel engines has been linked to impaired pulmonary development in adolescents; increased cardiopulmonary mortality; measurable pulmonary inflammation; increased severity and frequency of asthma attacks, emergency room visits, and hospital admissions in children; increased rates of heart attacks and strokes in adults; increased risk of cancer; and increased asthma and lung disease in children; and

WHEREAS, coal contains toxic heavy metals – including mercury, arsenic, and lead – and exposure to these toxic heavy metals in high concentrations is linked to cancer and birth defects; and

WHEREAS, petroleum coke contains Polycyclic Aromatic Hydrocarbons (PAHs) and heavy metals – including arsenic, copper, mercury, nickel, and zinc – at levels that are harmful to fish and wildlife as well as humans; and

WHEREAS, crude oil, like that coming from the Bakken shale reservoir, is known to be volatile, highly flammable, and contain elevated concentrations of benzene, a potent carcinogen; and

WHEREAS, trains delivering crude oil, coal and petcoke traveling through the Bay Area will follow routes adjacent to the San Francisco Bay Estuary and Oakland water front its tributaries, and routes adjacent to the Sacramento River and Sacramento-San Joaquin Delta posing a serious threat to these ecosystems, and to California's agricultural irrigation and drinking water supplies; and

WHEREAS, hauling crude oil, coal and petcoke into California involves traversing some of the most challenging mountain passes in the nation, areas laced with earthquake faults and numerous unsafe old steel and timber bridges over major waterways, greatly increasing the probability of serious accidents; and

WHEREAS, trains delivering crude oil, coal, and petcoke would travel on Oakland's existing train lines, which pass through our most vulnerable communities of East and West Oakland, which, throughout Oakland's history, have been exposed to significant environmental harm from industrial and commercial uses; and

WHEREAS, given the record of crude-oil and coal rail accidents in recent years, an event such as Lac Mégantic or a coal train derailment could have catastrophic effects if it occurred in any populated area; and

WHEREAS, historically, when environmental accidents do occur, oil companies spend years in litigation over damages as strategy to undercut payments to affected communities or deflect blame; and

WHEREAS, the cumulative impacts of the combined crude oil, coal, and petcoke train traffic through Oakland and other parts of California, in addition to the cumulative upstream and downstream greenhouse gas impacts of these fossil fuels, must be analyzed prior to the transport of any of these hazardous materials through our communities; now, therefore, be it

RESOLVED: That the Oakland City Council opposes using existing rail lines to transport hazardous crude oil, coal and petcoke along California waterways, natural habitats, through densely populated areas, through the East Bay and Oakland, through special districts and the Port of Oakland; and be it

FURTHER RESOLVED: That the City Administrator or his/her designee shall:

- Consider submitting comments in opposition to CEQA documents and any draft permit approvals, such as air permits or zoning changes for transport of crude oil, coal and petcoke, including a statement that any CEQA analysis must include a region-wide cumulative impacts analysis by a lead agency to fully account for the direct, indirect and cumulative impacts associated with multiple proposals for coal, petcoke and crude oil transport and export, and crude refining, in California communities;
- Submit a copy of this Resolution to Governor Edmund G. Brown, Jr. whereby the City Council of Oakland requests that he take executive action similar to New York Governor Cuomo's executive order directing state agencies to conduct a comprehensive review of safety procedures and emergency response preparedness related to shipments of volatile crude oil and a cumulative impacts analysis similar to the Washington Department of Ecology for coal mining, transport and burning;
- Submit copy of this Resolution to the Bay Area Air Quality Management District (BAAQMD) whereby the City Council of Oakland urges that the BAAQMD require public notice and CEQA review for all air permitting decisions made in connection with fossil fuel rail terminals, or port facilities, including change of use decisions, such as the BAAQMD's issuance of a permit to operate a crude-by-rail project without any notice to the public or environmental and health review;
- Address impacts to public health, safety, property, air quality and surface and groundwater caused by the transport of coal, petroleum coke, and crude oil through Oakland by actively enforcing applicable local public health, safety, building, electrical, nuisance, and fire codes and by actively enforcing applicable federal environmental statutes delegated to Oakland;
- Submit a letter to rail carriers involved in transport of crude oil, coal, and petcoke in California requesting:
 - that the rail carriers make public any plans for new or expanded rail facilities or significant rail traffic volume increases;
 - that the rail carriers provide representatives to meet periodically with local citizen groups and local government officials from Oakland to seek mutually acceptable ways to address local concerns;
 - that the rail carriers update its emergency response plan with the City of Oakland to account for the transport of crude oil, coal, and petroleum coke and the potential emergencies that could occur with accidents including these hazardous materials;
 - that the rail carriers conduct environmental monitoring in Oakland, including but not limited to groundwater and air monitoring, and submit environmental monitoring or testing information to local government entities on a monthly basis for 10 years; and
 - that the rail carriers implement measures to reduce community impacts including, but not limited to, drafting road improvement plans for grading, widening, or otherwise providing crossings at intersections that would be impacted by rail traffic increases to

prevent rail accidents and offset congestion; and require the railroad to pay in full for these upgrades in Oakland; and

- Submit a copy of this Resolution to the California Public Utilities Commission (CPUC) whereby the City Council of Oakland seeks assurances that the CPUC railroad safety program is adequately implemented in Oakland and other areas that may receive crude by rail shipments, including investigation, inspection, infrastructure improvement, detection and mitigation of risks or any other procedures or mechanisms available to the CPUC;
- Send a copy of this Resolution to the U.S. Department of Transportation, which is developing regulations for federal rail safety of shipment of fossil fuels by rail in DOT-111 cars;
- Alert and communicate opposition to other cities along the transportation route, and support their efforts;
- Work through the League of California Cities, California State Association of Counties, and other relevant organizations to articulate opposition;
- Alert our State legislative representatives and our lobbyists in Sacramento and enlist their help; and
- Lobby federal Senators and Representatives to enlist their help to engage the appropriate regulatory authorities at the federal level.

IN COUNCIL, OAKLAND, CALIFORNIA,

JUN 17 2014

PASSED BY THE FOLLOWING VOTE:

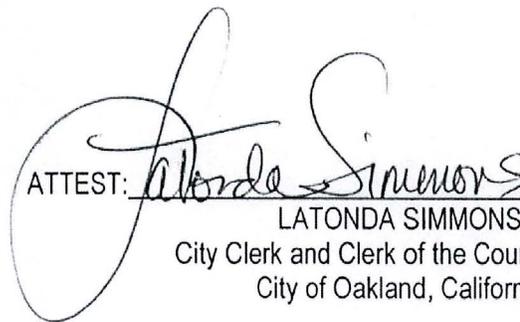
AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND
PRESIDENT KERNIGHAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LATONDA SIMMONS

City Clerk and Clerk of the Council of the
City of Oakland, California

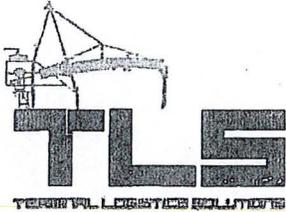
ATTACHMENT B

including this Agreement, or the Subsequent Approvals; or (vi) materially modify, reduce or terminate any of the rights vested in City Approvals or the Subsequent Approvals made pursuant to this Agreement prior to expiration of the Term. Developer reserves the right to challenge in court any City Regulation that would conflict with this Agreement or reduce the development rights provided by this Agreement, provided that such City Regulation directly affects the Project; provided, however, Developer shall first follow the dispute resolution procedures in Article VIII.

3.4.2 Regulation for Health and Safety. Notwithstanding any other provision of this Agreement to the contrary, City shall have the right to apply City Regulations adopted by City after the Adoption Date, if such application (a) is otherwise permissible pursuant to Laws (other than the Development Agreement Legislation), and (b) City determines based on substantial evidence and after a public hearing that a failure to do so would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety. The Parties agree that the foregoing exception to Developer's vested rights under this Agreement is in no way intended to allow City to impose additional fees or exactions on the Project, beyond the City Fees described below in Section 3.4.5, that are for the purpose of general capital improvements or general services (except in the event of a City-wide emergency).

3.4.3 Existing City Regulations. The City shall, at the Developer's sole cost and expense, compile two binders which include copies of all Existing City Regulations within ninety (90) calendar days after the Adoption Date, sign both copies, and deliver one copy to Developer. The City shall make every reasonable effort to include all Existing City Regulations.

ATTACHMENT C



July 15, 2015

The Honorable Mayor Libby Schaaf
One Frank H. Ogawa Plaza
3rd Floor
Oakland, CA 94612

Re: World Class Multi-Commodity Bulk Terminal

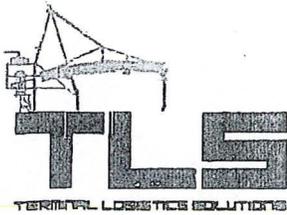
Dear Mayor Schaaf:

First, thank you for your time and for your forthright comments as you have expressed both your support for and your concerns about this potentially transformational project. Furthermore, thank you for providing us the opportunity to inform you, not only about the unique features (as measured against any terminal anywhere in the world), of our state-of-the-art multi-commodity bulk terminal facility, but about the misconceptions and disinformation that have apparently resulted in such opposition to what should be universally viewed as a win-win economic driver for our city.

You, other elected officials, and the citizens of Oakland at large have long awaited the promise of great economic benefits that would emanate from the optimized development of the Oakland Army Base. Terminal Logistics Solutions, LLC ("TLS") takes its role as the "Deliverer" on that promise, with the utmost seriousness.

To that end, TLS is in the process of investing over \$250 million to make those benefits a reality and to generate (i) a construction payroll of \$76 million, and (ii) annual and induced payrolls of \$120 million, for the proposed 66 year life of the project (escalated by inflation). Upon completion, the Port of Oakland will solidify its' position as the economic engine to drive Oakland's economy forward for decades to come. The mission statement of our project is "*A Terminal to Feed, Clean and Power the World*". We believe Oakland is the ideal location to build and operate such a best-in-class facility, and a huge driver in our design and operating strategy is to be the most environmentally sensitive and responsible multi-bulk commodity terminal in the world.

TLS proposes to build and operate its marine Terminal to receive multiple commodities from various parts of the Western United States via single line rail services provided by the Union Pacific and BNSF Railroads. To be economically viable, we must be able to transload raw materials such as corn, soy beans, borax, iron ore, pot ash, soda ash, and yes, coal. The first manifestation of our commitment toward unparalleled environmental responsibility is our mandate that these various commodities would be transported from their points of origin in newly designed covered railcars to our Terminal, and then transferred via a completely covered and contained system of domed storage and fully encapsulated conveyors to ships bound for other parts of the world. Our preeminent concern regarding the acceptance and handling of all commodities is the mitigation and elimination of fugitive dust such that ambient air quality would actually improve as a result of our operations, as further described below.

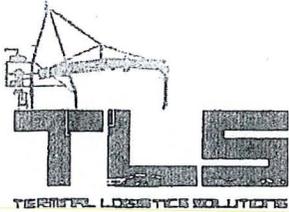


You candidly expressed your concern relating to the health and safety of the community vis-à-vis the inclusion of coal as one of our exported commodities. From the inception of this project, we have analyzed ports throughout the world, as well as here in West Oakland, where multiple commodities, including coal, may have been irresponsibly transported, handled and loaded. The awareness gained therefrom, regarding environmental stewardship (or the lack thereof), has actually served as a base line for our investment in designing our state-of-the-art marine Terminal and operation in a way that would actually improve the local environment and reflect our commitment to enhancing our community and the quality of life of all of its residents.

Having served as the Executive Director of the Port of Oakland, I want to express to you now, and to the entire City Council that I am personally committed and will hold myself and all TLS staff and operations to the highest possible standards of not only environmental responsibility but, overall safety, efficiency and productivity. Our steadfast commitment will be to benefit the entire community of Oakland without sacrifice.

I seek to assuage your concerns regarding any perceived or alleged negative impact of the TLS operations as follows:

- First, be assured that the Terminal we are designing and plan to operate will meet or exceed ALL California Environmental Quality Act (CEQA) requirements. We will comply with Air Quality Monitoring requirements as established by the Bay Area Air Quality Management District and air quality monitors will be on site.
- TLS will NOT use nor allow open or uncovered rail cars to be used as a part of its operation. All rail cars will be covered from point of origin to and from our Terminal, protecting all communities along the transit route from any possibility of fugitive dust. This will eliminate fugitive dust and debris blowing off the train as it travels to or from our Terminal.
- TLS will use covered bottom-release rail cars designed to release the commodities, including coal, into a deep underground transfer compartment with dust collection systems installed for total dust mitigation.
- TLS will employ enclosed and covered conveyance systems that will transfer all commodities to covered and enclosed state-of-the-art storage facilities on the site. The commodities will be transferred and conveyed from those storage facilities via an encapsulated system designed to transfer the commodities *directly* into waiting ships. All commodities will be loaded onto the vessel using enclosed, state-of-the-art shiploaders with dust control/collection technology.



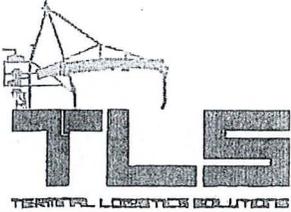
- No unsightly piles whatsoever (much less “mountains”) of commodities will be seen; no bulldozers pushing, loading or unloading commodities from one site to another. We are designing and will use enclosed dome technology for storage of the commodities until actually transferred to a ship.
 - TLS will use its reasonable commercial efforts to encourage other bulk commodity terminal operators to implement processes and procedures that mirror our operations here in Oakland.
- Hopefully the above delineated commitments demonstrates the zero negative impact our operation would have on the local community, to your complete satisfaction.

Finally, regarding the notion of the City of Oakland as a transporter of a commodity that would “increase pollution and the global carbon footprint,” the coal TLS is considering would emanate principally from Utah with smaller amounts from neighboring Western Bituminous states and would be “Compliance Coal”. Compliance Coal is defined, pursuant to Phase II of the *Clean Air Act Amendments*, as “any coal that can be burned without pollution abatement equipment and emit less than 1.2 lbs. of sulfur dioxide per million BTU’s.” This product is also known as “low sulfur coal”. Because of the unusually high heat value and low sulfur content of this Western Bituminous coal, it is among the cleanest burning coals in the world.

Thus, to the extent TLS were to secure contracts to transload this Utah based Compliance Coal, we would actually facilitate the supplanting of much dirtier (higher sulfur) coal such as lignite, or worse in some instances, wood, animal dung, and highly polluting feedstock that is burned, particularly in emerging countries around the world. As such, ironically enough, the City of Oakland would not only play a role in reducing pollution in those countries, but because of the efficient and clean burn (high heat) of the Western Bituminous Compliance Coal, would also play a role in reducing the global carbon footprint.

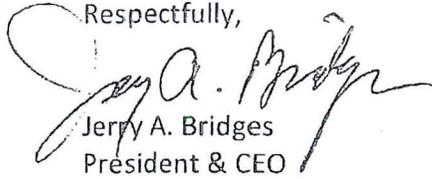
You have our absolute pledge to meeting each of the above enumerated operating standards, as they apply locally as well as globally. As designed, if allowed to operate without interference, the Terminal proposed by TLS will be financially successful generating significant revenues to be shared with the City of Oakland as a part of its master lease agreement terms. Jobs will be created and ancillary businesses, necessary to support such a massive undertaking as this Terminal will emerge and generate further economic benefits, growth and development for our city. This project can and will become the extraordinary economic engine for our community we both seek.

TLS is already making substantial investments of time, energy, and resources with a relentless sense of civic and corporate responsibility that will result in alliances with the local community to promote economic development and growth while improving the quality of life in Oakland and the communities in which we operate.



Technology, cooperation, and our commitment to do the right thing provides an opportunity for Terminal Logistics Solutions to deliver a project for Oakland that is truly innovative and a model for the nation. We view this project as an opportunity for you and the City of Oakland to be a leader and a model of how to use innovative technology, community programs and external partnerships to create solutions to environmental challenges. We are committed to designing a model project of which we can all be proud.

Respectfully,



Jerry A. Bridges
President & CEO



CONFIDENTIAL
SECRET