Appendix A

This document responds to the information filed by the Port of Long Beach ("Port"), Oxbow Carbon and Minerals LLC ("Oxbow"), and Metropolitan Stevedoring Company ("Metroports"). As explained below, the Port, Oxbow, and Metroports are incorrect that the Port may approve the Operating Agreement for Pier G with Metroports (Operating Agreement) and the lease of the Pier G Coal Shed with Oxbow (Lease) (collectively the "Project") without conducting review under the California Environmental Quality Act ("CEQA"). The Long Beach City Council should require the Port to conduct the missing environmental review before moving forward.

I. This Project has never undergone an environmental analysis.

For the first time in this appeal, the Port in Attachment 8 of its submission lays the history of development at Pier G related to the export of bulk commodities, and argues that the environmental impacts of this Project were "adequately analyzed" in the 1992 negative declaration for the construction of the coal shed at Pier G. Harbor Department's Response to Appeal at 11. This negative declaration, however, *only evaluated the construction impacts of building the shed.* Unsurprisingly, this document concluded that building a shed would have no environmental impacts. The 1992 document did not disclose or examine the many serious environmental impacts of this Project, including the amount of coal that would be shipped through the Port, the air emissions from diesel ships, trains, and trucks used to transport the coal, the health and safety risks of transporting uncovered coal cars, the climate impacts from mining and burning coal, the potential water quality impacts from fugitive coal dust escaping into the Port of Long Beach, or the construction emissions from this Project's proposal to construct two football fields worth of asphalt.[1] Adequate environmental review has never been conducted for this Project, and the City of Long Beach should not allow its Port to approve this Project without first considering its significant impacts.

II. The proposed lease requires a dramatic increase in coal exports and is therefore not categorically exempt under Exemption Class I as a "negligible" expansion of use.

The Port argues that the lease with Oxbow Energy Solutions ("lease") is exempt from environmental review under Exemption Class I because it will involve "negligible or no expansion of an existing use." Port of Long Beach Letter to Mayor and City Council at 11 (August 19, 2014). Because this lease requires a dramatic increase in the volume of coal exported from the terminal beyond historic export levels, it does not involve a "negligible" expansion, and environmental review must be conducted by the Port before approving the lease.

Exemption Class 1 exempts projects from review under CEQA that consist of the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing

---

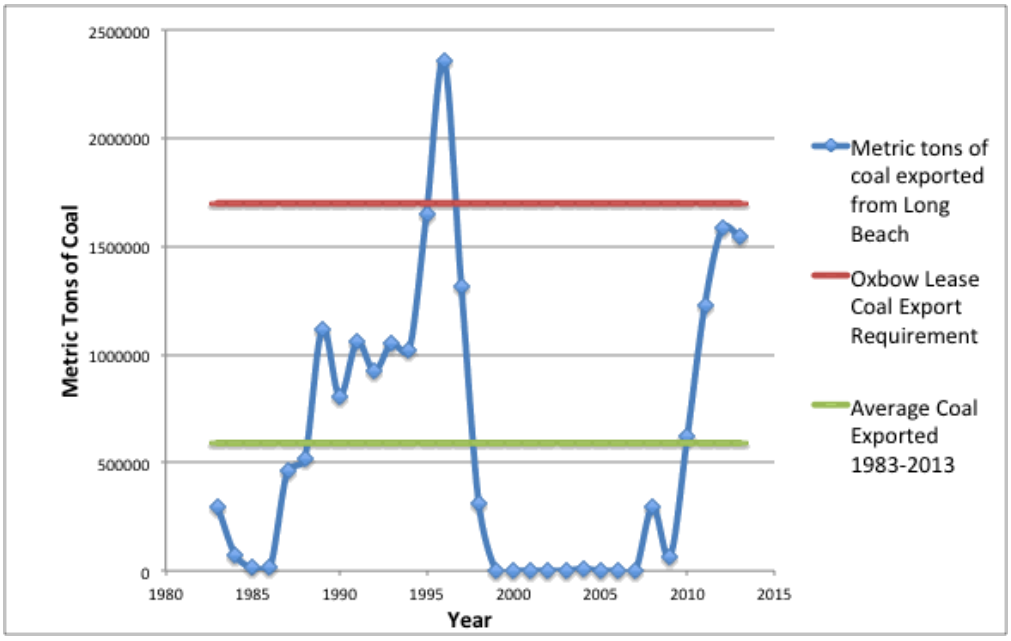
[1] *See* Comment and Attachments dated June 9, 2014; *see also* Port of Los Angeles and Port of Long Beach Water Resources Action Plan Final Report (Aug. 2009), *available at* http://www.portoflosangeles.org/DOC/WRAP_Final.pdf (discussing sources of water pollution in the Ports) [Water Resources Action Plan included in submission].

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.

In order to determine whether the lease involves "expansion of an existing use," the lead agency must first determine the current existing use, or the project's "baseline." The Port correctly points out that the baseline for determining whether a project will involve an expansion of an existing use is typically the "environmental conditions in the vicinity of a project as they exist at the time environmental analysis is commenced." Harbor Department's Response to Appeal at 6*; see also* CEQA Guidelines § 15125; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 C4th 310. When conditions may vary over time, it is necessary to consider conditions over a range of time periods. *Communities for a Better Env't*, 48 C4th at 327-28. As the California Supreme Court has explained, "[a] temporary lull or spike in operations that happens to occur at the time of environmental review for a new project begins should not depress or elevate the baseline; overreliance on short-term activity averages might encourage companies to temporarily increase operations artificially, simply in order to establish a higher baseline." *Id.* at 328.

The Port never previously analyzed the baseline of coal export levels from Pier G. Now, for the first time on appeal, the Port has highlighted the throughput for the Pier G Coal Shed from 2011 in the Port's letter. Port of Long Beach Letter to Mayor and City Council at 5 (August 19, 2014). The Port's letter shows that for the past four years, coal export has ranged between 1.23 million metric tons in 2011, with a projected 1.69 million metric tons spike for 2014. This data is misleading, however, because 2011 marked a dramatic increase in coal exports, with the projected spike in 2014 being the highest volume of coal exports in more than a decade.

The Port has also for the first time disclosed coal export levels since 1983, buried in the supplemental materials it provided. This data is summarized in the following graph.



The graph shows that 2011 represented the start of a dramatic spike in coal exports, and that the average coal exports from Long Beach are around 519,536 metric tons per year. Given the fluctuations in coal export from Long Beach, the average coal exported, rather than the short-term spike in recent years is a more appropriate baseline for the purposes of determining whether this lease will involve a "negligible expansion of an existing use" for the purposes of Exemption Class I. *See Communities for a Better Env't*, 48 C4th at 328.[2]

As the Port admits, the lease includes an annual guaranteed minimum tonnage of 1.7 million metric tons of coal for the first 5 years, which is predicated on what the Port estimates is what the "***minimum*** throughput would be for the first 5 years of the lease." Harbor Department's Response to Appeal at 3, 4 (bold and italics in original). Thus, this lease admittedly requires coal exports more than *three times* the average exports for the Port of 519,536 metric tons. And 1.7 million metric tons is only the "***minimum***." *Id.* More likely, given recent reports that "[Metro Ports Long Beach's] customer for coal exports would like to increase their volumes," coal exports from Pier G will increase *beyond* 1.7 million. TranSystems, POLB Pier G Bulk Handling Facility Analysis, Final Report, at 3 (Feb. 13, 2013). This lease, which requires a tripling of the export of coal from the Port, with the anticipation that coal exports will increase even further, is hardly "negligible or no expansion of an existing use." Because this lease will result in a

[2] The Port is incorrect that the baseline should be the "full operation of Pier G and the Coal Shed under existing approvals based on its physical capacity," or, in the alternative, "the current throughput conditions." Harbor Department's Response to Appeal at 7. As explained by the California Supreme Court, the proper baseline is the current conditions at the facility, not the maximum permitted or physical capacity, when, like here, a project would require a significant expansion in use. *Communities for a Better Env't*, 48 C4th at 316. And because the Port's projection of 1.69 million metric tons for 2014 is an anomalous spike in coal exports, this "current throughput" should not be used as the project's baseline. *Id.* 48 C4th at 328.

dramatic increase in coal export, Exemption Class I does not apply, and the Port must conduct environmental review before approving the lease.

III. Even if these agreements fall under a categorical exemption, the unusual circumstances exception to the exemption applies.

A categorical exemption should not apply if "there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." CEQA Guidelines § 15300.2(c). 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.32 413 at 426. Petitioners have demonstrated that this Project meets the unusual circumstances for several reasons.

First, because of its sheer size and the nature of operations, this Project differs from the projects for which a categorical exemption typically applies. *See Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster*, 52 Cal. App. 4th 1165, 1207(1997) (finding that a landfill "differs from existing facilities in general in that it is used for a type of activity . . . that would not be entitled to . . . any . . . exemption for such activity). It is unlike the exempt projects the Port compares it to. Unlike like a lease of a 9,000 square foot building for a parole office (*City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810) or the placement of utility boxes in San Francisco (*San Francisco Beautiful v. City & County of San Francisco* (2014) 226 Cal.App.4th 1012), this Project requires the export of 1.7 million tons of coal, and implicates a 144,000 square foot coal barn, a large terminal that supports major rail and ship infrastructure, and equipment that offloads coal and other bulk commodities onto ships. It is simply not within the "class of activities that does not normally threaten the environment." *Azusa Land Reclamation Co.*, 52 Cal. App. 4th at 1206.

Second, this Project poses environmental risks that do not exist for the typical exempt project. Unlike a lease for an office or the placement of utility boxes, this Project will cause major emissions of toxic air pollution, criteria air pollution, and greenhouse gases, and contribute to water pollution in the harbor.

It is well established that the air pollution impacts from Port operations alone, including the exact same operations implicated by this Project, have been a concern for many years. For example, the South Coast Air Quality Management District's Multiple Air Toxics Exposure Study made the following findings:

- Modeling analysis shows the highest risks from air toxics surrounding the port areas, with the highest grid cell risk about 3,700 per million, followed by the area south of Central Los Angeles where there is a major transportation corridor, with grid cell modeled risk ranging from about 1,400 to 1,900 per million.
- Modeling analysis also showed pronounced exposures along freeways and near

intermodal facilities.[3]

In addition to the toxic impacts of diesel exhaust, regional air pollution from the major pollution sources also creates great concern.[4] Moreover, the emissions from the ships, trains, trucks, and construction equipment imposes substantial local, regional and global impacts. Petitioner provided evidence of emissions from the many categories of direct and indirect emissions associated with this Project that clearly demonstrate the unusual environmental risk imposed by this Project. Thus, even assuming that an exemption applied, because unusual circumstances exist, the Port must conduct environmental review before approving this Project.

IV. Even if these agreements fall under a categorical exemption, the cumulative impacts exception applies.

"[W]hen the cumulative impact of successive projects of the same type in the same place, over time is significant," a categorical exemption cannot be used. 14 Cal. Code Regs § 15300.2(b). The Port's own prior analysis for a recent terminal development demonstrates that cumulative impacts are implicated with this Project. In an April 2013 Environmental Impact Report for the TTI Grain Terminal project, the Port identified seventy-nine projects in the project area for the Pier T expansion project, which is substantially the same project area as here, that raised cumulative impact concerns.[5] Similar to that project, there are construction impacts and operational impacts from this Project that contribute to cumulative impacts, as outlined in prior letters. In addition for the TTI grain terminal project, the Port concluded that there would be significant cumulative impacts for several categories of impacts.[6] Since this Project is within the same project area and will lead to increased emissions from construction activities and increase operations, the cumulative impacts exception would be triggered if it is determined that categorical exemptions apply.

V. The Project's description is inadequate under CEQA because it improperly omits planned future expansion of coal exports from Pier G.

CEQA requires that the lead agency accurately describe all relevant parts of a project, including reasonably foreseeable future expansions. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 C3d 376. This rule is based on the idea that the "whole of the

---

[3] SCAQMD, Multiple Air Toxics Exposure Study, 6-2, *available at* http://www.aqmd.gov/docs/default-source/air-quality/air-toxic-studies/mates-iii/mates-iii-final-report-(september-2008)/chapter-6-findings-and-discussion.pdf?sfvrsn=4 [Chapter 6 of MATES III included in submission].

[4] The need to reduce emissions from freight sources, including those at the Port of Long Beach, has been highlighted in the Final 2012 AQMP. *See generally* SCAQMD, Final 2012 AQMP, *available at* http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2012-air-quality-management-plan/final-2012-aqmp-carb-epa-sip-submittal-(december-2012)/2012-aqmp-carb-epa-sip-submittal-main-document.pdf.

[5] Port of Long Beach, Final Environmental Impact Report, TTI Grain Terminal Export Project ("TTI EIR"), at 2-3 to 2-16, *available at* http://www.polb.com/environment/docs.asp [Excerpts of EIR included in submission].

[6] See, e.g., TTI EIR, at 3.1-32.

action" be considered and that environmental analysis not to be deferred. 14 Cal. Code Regs § 15378(a); Pub. Res. Code § 21003.1. In other words, an agency may not chop up or "piecemeal" a project into smaller pieces so as to avoid review of the entire project. *Orinda Ass'n v. Board of Supervisors* (1986) 182 CA3d 1145, 1171.

For example, in *Laurel Heights*, the University of California planned to relocate its biomedical research facilities to a newly acquired 354,000 square-foot building. The University claimed in its environmental impact report (EIR) that it only intended to occupy 100,000 feet of the building, but the Court found that in newsletters, public meetings, and private correspondence, the University had indicated that it intended to occupy the entire space after another agency's lease on the remainder of the building expired. Finding that there was "credible and substantial evidence" that expansion plans were reasonably foreseeable, the Court held that EIR did not adequately describe the project.

Here, the Port has described the Project as approving a new 20-year Operating Agreement with Metroports, which includes Metroports performing "necessary maintenance and safety repairs" and approving a new 15-year Lease with Oxbow, for use of a coal barn for coal export, with an anticipated export of a minimum of 1.7 million metric tons of coal per year. This Project description, however, is inadequate under CEQA, given the credible and substantial evidence that the Port intends to expand coal export from the Pier G beyond what is disclosed in the Project description, in order to increase revenues for the Port.

For example, 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. Similarly, Metro has publically stated that the Port is planning on expanding Pier G terminal to handle up to 10,000,000 metric tons of commodities per year. MetroPorts, Excerpt from Application for Port of Oakland Coal Export Facility [Attachment A to Appeal Letter]. And the Port has recently conducted other redevelopment projects at Pier G, which may impact coal export volumes. *See* EIR for TTI Grain Terminal at 2-5, available at http://www.polb.com/civica/filebank/blobdload.asp?BlobID=11412 (noting the Port's approval of a project to "develop a marine terminal of up to 315 acres (127 ha) by consolidating portions of two existing terminals on Piers G and J.")

Thus, it is clear that the Port intends to expand coal export beyond what it has disclosed in the Project description. Because these expansion plans have not been evaluated, the Project description is inadequate, and the City of Long Beach should require the Port to conduct adequate environmental review of the entire expansion of coal export from Pier G before moving forward.

VI. Further environmental review is required for the Coal Shed Lease under Public Resources Section 21166.

When an EIR has been prepared for a project pursuant to CEQA, a subsequent or supplemental EIR is required when there is new information, which was not know at the time the EIR was certified as complete. In Appellants' comment submitted on June 9, 2014 and Appellants' appeal submitted on June 23, 2014, Appellants described new information that was never analyzed in the 1992 Negative Declaration, including GHG emissions from transporting coal and coal train accidents caused by fugitive coal dust. The Port now claims that potential environmental impacts of GHG emissions were generally known or could have been known in 1992 when the Negative Declaration was adopted and the Coal Shed was approved, but there is a vast body of new information linking coal in particular to an increase in GHG emissions and other hazards. Furthermore, the 1992 Negative Declaration only analyzed emissions involved with the construction of the coal shed, but did not analyze emissions involved with the use of the coal shed for transporting coal.

The pertinent law establishing the necessity of a subsequent or supplemental EIR is set out in Public Resource Code § 21166, where it states, "when an environmental impact report has been prepared . . . no subsequent or supplemental environmental impact report shall be required . . . unless one or more of the following events occurs:

a. Substantial changes are proposed in the project which will require major revisions of the environmental impact report
b. Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report
c. New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

PRC § 21166. California Code of Regulations section 15162 further elaborates by setting out examples of potential new information, which include:

a. The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration
b. Significant effects previously examined will be substantially more severe than in the previous EIR

14 CCR § 15162. Since 1992, there is a significant amount of new information regarding the nexus between GHG emissions and climate change, and in particular, there is a significant amount of new information on coal's impact on climate change. The Port has identified multiple

cases that declare that information on the nexus between GHG emissions and climate change is not new information, but none of those cases discuss new information relating to coal's impact on GHG emissions. [*Citizens Against Air Pollution v. City of San Jose,* 173 Cal.Rptr.3d 794 (2014) (Citizen's challenge EIR for addendum to Airport Master Plan from 1997 on grounds that there is new information linking GHG emissions to climate change, without identifying how the addendum impacts GHG emissions); *Citizens for Responsible Equitable Environmental Development v. City of San Diego*, 196 Cal.App.4th 515 (2011) (Citizens challenge residential development EIR from 1994 claiming that there is new information linking GHG emissions to climate change, merely indicating that indirect GHG emissions contribute to climate change); *Concerned Dublin Citizens v. City of Dublin*, 214 Cal.App.4th 1301 (2013) (Citizens challenge residential development EIR from 2002 claiming that there is new information linking GHG to climate change since 2002)]

In each case mentioned, the petitioner was making the general argument that there is new information that GHG emissions were linked to climate change, without identifying how the particular project itself was significant in that regard. Here, on the other hand, Appellants are arguing that there is new information specifically linking coal to increased GHG emissions, which was never examined in the 1992 Negative Declaration. In fact, the 1992 Negative Declaration only analyzed the impacts of the construction of the coal shed, and did not analyze any of the emissions involved in mining, transporting, and burning coal. Appellants attached multiple documents to its comment dated June 9, 2014, which include documents describing the role of black carbon in the climate system (2013), spontaneous combustion from coal (2013), quantifying emissions from spontaneous combustion from coal (2014), air pollution and GHG emissions from idling ships (2009), coal dust leading to train derailments (2011), and many more documents exemplifying new information on the dangers of exporting coal.[7] Additionally, recent information shows that the production of petcoke is going to result from processing increasingly heavier and lower quality (higher sulfur) crude oils, which significantly increases the amount of GHG emissions.[8] None of this information was known or could have been known in 1992 when the Negative Declaration was adopted.

Based on this new information, the operation of the coal shed on Pier G clearly has one or more significant effects not discussed in the previous Negative Declaration. 14 CCR § 15162. The previous Negative Declaration did not analyze any GHG emissions related to exporting coal. It did not analyze emissions from transporting coal by rail, emissions from loading coal onto ships, emissions from idling ships, or emissions from ships transporting coal across the ocean. The previous Negative Declaration also did not discuss the impact that coal dust has on rail accidents or spontaneous combustion. The Port claims that information regarding fugitive dust is not new information, but information regarding train derailment caused by fugitive dust is new information that needs to be analyzed. By not analyzing any of these impacts, the 1992 Negative Declaration completely underestimated the environmental impacts of the operations at the coal shed and Pier G, and the impacts are significantly more severe than *previously disclosed.*

---

[7] *See* Comment and Attachments dated June 9, 2014.

[8] *See e.g.,* Karras, Greg, "Combustion Emissions from Refining Lower Quality Crude Oil: What is the Global Warming Potential?" *Environ. Sci. Technol.,* vol. 44 (2010), pp. 9854-9589 [Article included in submission]..

The Port is skirting its duties under CEQA to avoid environmental review with the full knowledge that the activities at Pier G and the Coal Shed have severe environmental impacts. The Port cannot ignore its duties to develop a supplemental EIR to address the new information linking coal to increased GHG emissions, as well as coal dust leading to increased train derailments. Additionally, the Port cannot claim that a 1992 Negative Declaration pertaining to the construction of a coal shed is an adequate environmental review for exporting millions of tons of coal across the world. The City of Long Beach should direct the Port to conduct the required review before moving forward.

VII. The Project's description is inadequate under CEQA because it improperly omits planned future expansion of coal exports from Pier G.

CEQA requires that the lead agency accurately describe all relevant parts of a project, including reasonably foreseeable future expansions. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 C3d 376. This rule is based on the idea that the "whole of the action" be considered and that environmental analysis not to be deferred. 14 Cal. Code Regs § 15378(a); Pub. Res. Code § 21003.1. In other words, an agency may not chop up or "piecemeal" a project into smaller pieces so as to avoid review of the entire project. *Orinda Ass'n v. Board of Supervisors* (1986) 182 CA3d 1145, 1171.

For example, in *Laurel Heights*, the University of California planned to relocate its biomedical research facilities to a newly acquired 354,000 square-foot building. The University claimed in its environmental impact report (EIR) that it only intended to occupy 100,000 feet of the building, but the Court found that in newsletters, public meetings, and private correspondence, the University had indicated that it intended to occupy the entire space after another agency's lease on the remainder of the building expired. Finding that there was "credible and substantial evidence" that expansion plans were reasonably foreseeable, the Court held that EIR did not adequately describe the project.

Here, the Port has described the Project as approving a new 20-year Operating Agreement with Metroports, which includes Metroports performing "necessary maintenance and safety repairs" and approving a new 15-year Lease with Oxbow, for use of a coal barn for coal export, with an anticipated export of a minimum of 1.7 million metric tons of coal per year. This Project description, however, is inadequate under CEQA, given the credible and substantial evidence that the Port intends to expand coal export from the Pier G beyond what is disclosed in the Project description, in order to increase revenues for the Port.

For example, 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. Similarly, Metro has publically stated that the Port is planning on expanding Pier G terminal to handle up to 10,000,000 metric tons of commodities per year. MetroPorts, Excerpt from Application for Port of Oakland Coal Export Facility [Attachment A to Appeal Letter]. And the Port has recently conducted other redevelopment projects at Pier G, which may impact coal export volumes. *See* EIR for TTI Grain Terminal at 2-5, available at http://www.polb.com/civica/filebank/blobdload.asp?BlobID=11412 (noting the Port's approval of a project to "develop a marine terminal of up to 315 acres (127 ha) by consolidating portions of two existing terminals on Piers G and J.")

Thus, it is clear that the Port intends to expand coal export beyond what it has disclosed in the Project description. Because these expansion plans have not been evaluated, the Project description is inadequate, and the City of Long Beach should require the Port to conduct adequate environmental review of the entire expansion of coal export from Pier G before moving forward.