



March 29, 2018

Darryl White, Chief Executive
Bank of Montreal
100 King Street West
1 First Canadian Place
Toronto, ON M5X 1A1

Re: Oakland Bulk and Oversized Terminal

Dear Mr. White:

We are writing to you on behalf of a broad coalition of global environmental organizations, local community groups, and individuals who live near the site of the proposed Oakland Bulk and Oversized Terminal (OBOT). We respectfully request that the Bank of Montreal publicly pledge that the bank and its subsidiaries will refrain from advising on or arranging financing for the proposed terminal. We ask that you honor the Oakland City Council's ordinance prohibiting storage and handling of coal anywhere in the city, including at the proposed site.

Bank of Montreal is a signatory to the Equator Principles and takes pride in its record on environmental, social and governance issues. Supporting a coal terminal in Oakland would place the Bank's environmental reputation in jeopardy. The City of Oakland adopted its prohibition on coal handling within city limits after three comprehensive expert reports found that siting a coal terminal in West Oakland would pose a substantial danger to the health and safety of nearby residents and workers.ⁱ Most troublingly, the reports highlighted that toxic coal dust would blow into a largely low-income community that already faces health challenges from local air pollution.

Public documents have shown that BMO Capital Markets Managing Director Jeffrey Holt played a central role in obtaining a commitment of \$50 million of Utah public money from four Utah counties to finance construction of the terminal. Emails from Jeffrey Holt to Utah officials laid out a plan to raise an additional \$200 million for the project by marketing unrated debt to private investors, including pension funds.ⁱⁱ

If the Bank of Montreal continues its role in financing the OBOT, it risks several serious breaches of best practice that could damage the reputation of the bank and its officers and may even expose the bank to a variety of unforeseen liabilities:

- **Failure to disclose material facts to potential private debt investors:** Jeffrey Holt circulated a “teaser” for a private debt offering that described the facility as “a multi-commodity terminal,” with an “[a]nchor tenant to provide a throughput pledge of approximately four million tons.” But the document fails to mention that the anchor shipper, Bowie Resource Partners, is a coal company with well-publicized financial challenges.
- **Violation of Equator Principles:** BMO did not require its clients to conduct an environmental and social assessment to address the relevant environmental and social risks and impact of the proposed coal terminal (Principle 2). BMO and its client also failed to demonstrate effective stakeholder engagement, defined in Principle 5 as an ongoing process in a structured and culturally appropriate manner with affected communities and other stakeholders.
- **Appearance of conflicts of interest:** Jeffrey Holt was simultaneously serving as BMO’s agent, chair of Utah’s Transportation Commission, and “Strategic Infrastructure Advisor” to four Utah counties, which seems inconsistent with BMO’s own policy. While holding these varied positions, Holt secured \$53 million in public money from the State of Utah’s Community Impact Board with \$50 million to be channelled to Bowie’s subsidiary, Terminal Logistics Solutions, Inc. (TLS), which is contracted to operate OBOT, and \$3 million to cover fees including money for BMO.

There are numerous risks to the investors the Bank might recruit as lenders for the Oakland coal terminal:

- **Intense and ongoing state and local opposition to the project.** This opposition has been expressed in well-publicized public demonstrations, newspaper editorials, and pledges by state and local officials and candidates for public office. After Oakland passed its ban, Governor Jerry Brown signed a bill preventing public financing from being used to support expansion of coal-transport infrastructure and praised Oakland’s example: “The city of Oakland took an important step recently documenting the health and safety risks and climate impacts of coal and specifically banning its shipment through the city. Other localities should follow suit -- and the state should too -- to reduce and, ultimately, eliminate the shipment of coal through all California ports.”
- **Legal obstacles.** The developer has initiated a federal lawsuit, hoping to overturn the City’s ordinance banning the storage and handling of coal in Oakland. Currently in a federal trial court, this is likely to be heard by the Ninth Circuit Court of Appeals and, possibly, the United States Supreme Court—a process that will delay the project for years. The California attorney general recently filed a brief on behalf of the State of California in opposition to OBOT’s lawsuit against the City of Oakland. If the developer someday succeeds in overturning the City’s ordinance, opponents will mount a future challenge under the California Environmental Quality Act.
- **Declining markets for coal.** Although Bowie/TLS has negotiated an agreement to operate the terminal for 66 years, there is no credible evidence that the international

market for Utah coal will enable TLS to pay back \$200 million to be lent by the Bank's clients and \$50 million to be lent by the State of Utah. Global coal markets are notoriously unstable, and many Asian countries are making large investments to reduce their dependency on imported coal.

- **Bowie Resources' precarious finances.** Bowie is deeply in debt and recently failed in a bid to refinance its debt through merger with Murray Energy. A purpose-built coal export facility in Oakland depends on Bowie's ability to fulfill its promised throughput of coal for decades into the future. Dim long-term prospects for profitability have made the coal industry a pariah among investors.

We hope, by this letter, to make you aware of the highly risky and socially harmful nature of this venture. We request that you respond within two weeks with a pledge to abandon your support of the OBOT terminal as long as it is intended to ship coal.

This letter is signed by No Coal in Oakland and the West Oakland Environmental Indicators Project. No Coal in Oakland's successful campaign to urge the City of Oakland to ban the shipping and handling of coal was supported by the organizations listed on the next page.ⁱⁱⁱ

Please send any correspondence care of West Oakland Environmental Indicators Project, 349 Mandela Pkwy, Oakland, CA 94607.

This letter is supported by the following allies in the movement to keep financial institutions accountable for the human and environmental impact of fossil fuel projects: 350.org, Friends of the Earth Canada, Friends of the Earth USA and Rainforest Action Network.

ⁱSee: Public Health Advisory Panel, An Assessment of the Health and Safety Implications of Coal Transport through Oakland, June 14, 2016, <http://www2.oaklandnet.com/w/oak059227>; .Dr. Muntu Davis, Alameda County Health Officer, letter concurring in the findings of the Public Health Advisory Panel, <http://www2.oaklandnet.com/w/oak059343>.

ⁱⁱEnvironmental Science Associates Report, Report on the Health and/or Safety Impacts Associated with the Transport, Storage, and/or Handling of Coal and/or Coke in Oakland, Including at the Proposed Oakland Bulk and Oversized Terminal in the West Gateway Area of the Former Oakland Army Base, June 23, 2016

<http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK059404>

ⁱⁱⁱReport Prepared for Councilmember Kalb from Zoe Chafe Ph.D., Analysis of Health Impacts and Safety Risks and Other Issues/Concerns Related to the Transport, Handling, Transloading, and Storage of Coal and/or Petroleum Coke (Petcoke) in Oakland and at the Proposed Oakland Bulk and Oversized Terminal,

<http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK059408>

^{iv} Email from Jeffrey Holt to Utah officials (March 25, 2015), <http://nocolinoakland.info/wp-content/uploads/2016/03/Jeff-Holt-Email-with-3-Attachments-3-25-2015.pdf>

350 Bay Area
350 East Bay
350 Silicon Valley
Africans Deserve Reparations Now!
Alameda County Interfaith Climate Action Network
All Souls Episcopal Parish
Antiques by the Bay, Inc.
Artha Handmade Soaps
Asian Pacific Environmental Network
Bay Area Labor Committee for Peace and Justice
Benicians for a Safe and Healthy Community
Berkeley/East Bay Gray Panthers
Block by Block Organizing Network
California Interfaith Power & Light
Causa Justa :: Just Cause
Center for Biological Diversity
Center for Environmental Health
Church and Society Committee, Buena Vista United Methodist Church
Church by the Side of the Road
Citizens Climate Lobby – Alameda Chapter
Clean Water Action (California)
Coalition for Clean Air
Codepink Women for Peace
Communities for a Better Environment
Contra Costa Citizens Climate Lobby
Cool Planet Working Group – First Presbyterian Church of Palo Alto
Diablo Rising Tide
Earth Justice Task Force - Lakeshore Avenue Baptist Church
East Bay Housing Organizations
El Cerrito Progressives
Food & Water Watch
Fossil Free California
Friends of the Earth
Grand Lake Theater
Green Party of Alameda County
Greenaction for Health and Environmental Justice
Hills Conservation Network
Idle No More SF Bay
Interfaith Climate Action Network of the Interfaith Council of Contra Costa County
John George Democratic Club
Kehilla Community Synagogue Greening Committee
Lamorinda Peace and Justice Group
Local Clean Energy Alliance
Mujeres Unidas y Activas
North American Climate, Conservation and Environment (NACCE)
Oakland Climate Action Coalition
Oakland Justice Coalition
Oakland Peace Center
Oakland Rising
Peninsula Interfaith Climate Action Network (PICA)
Physicians for Social Responsibility – San Francisco Bay Area Chapter
Planting Justice
Plus M Productions
Public Advocates Inc.
Rainforest Action Network
Reimagine! Race, Poverty & the Environment
Rootskeeper
SEIU Local 1021
Skyline Community Church, United Church of Christ
Stand.earth
Strike Debt Bay Area
Sunflower Alliance
Sunrise Movement Bay Area
Sustainable Economies Law Center
System Change Not Climate Change - Bay Area
United Native Americans
Wellstone Democratic Renewal Club
West Oakland Environmental Indicators Project
West Oakland Neighbors