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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OAKLAND BULK & OVERSIZED TERMINAL,
LLC,

Plaintiff,

v.

CITY OF OAKLAND,

Defendant,

and

SIERRA CLUB and SAN FRANCISCO
BAYKEEPER,

Proposed Defendant-Intervenors.

Case No. 16-cv-7014 VC

**SIERRA CLUB'S AND SAN FRANCISCO
BAYKEEPER'S NOTICE OF MOTION,
MOTION TO INTERVENE,
MEMORANDUM IN SUPPORT OF
MOTION, AND REQUEST TO FILE RULE
12(b)(6) MOTION TO DISMISS**

Hearing: Apr. 20, 2017
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Place: Courtroom 4, 17th Floor

Action Filed: Dec. 7, 2016

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NOTICE

TO THIS HONORABLE COURT AND COUNSEL FOR THE PARTIES:

PLEASE TAKE NOTICE, pursuant to Civil Local Rule 7-2, that on April 20, 2017, at 10:00 a.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Vince Chhabria, at the United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Sierra Club and San Francisco Baykeeper, by counsel, will move the Court for leave to intervene as defendants in the above-entitled action.

MOTION

Pursuant to Federal Rule of Civil Procedure 24, Sierra Club and San Francisco Baykeeper respectfully move to intervene as defendant-intervenors in the above-captioned case. Counsel for Plaintiff Oakland Bulk and Oversized Terminal, LLC has been consulted; they are reserving their position pending review of this motion. Defendant City of Oakland does not oppose this motion.

This motion is supported by the accompanying Memorandum; Declarations of Raymond Durkee, Sejal Choksi-Chugh, Brittany King, Kent Lewandowski, and Jessica Yarnall Loarie; a Proposed Answer; and such oral argument as the Court may allow.

WHEREFORE, Sierra Club and San Francisco Baykeeper pray that the Court grant the instant motion, and thereby grant Sierra Club and San Francisco Baykeeper leave to intervene as defendants in this action.

In addition, if intervention is granted, Sierra Club and San Francisco Baykeeper further request that the Court, in lieu of the Proposed Answer, accept Proposed Defendant-Intervenors' Rule 12(b)(6) Motion to Dismiss lodged concurrently with this motion.¹

DATED: February 16, 2017

/s/ Colin O'Brien

COLIN O'BRIEN

*Attorney for Defendant-Intervenors Sierra Club and
San Francisco Baykeeper*

¹ Rule 24 requires an intervention motion to "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). To comply with this requirement, a Proposed Answer is attached. *See* Fed. R. Civ. P. 7(a) (defining "pleadings" to include an answer but not a motion to dismiss). However, if intervention is granted, Proposed Defendant-Intervenors request the Court accept for filing the concurrently lodged Rule 12(b)(6) Motion to Dismiss instead of the Proposed Answer. *See* Fed. R. Civ. P. 12(b) (stating certain defenses "must be made before pleading if a responsive pleading is allowed").

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Sierra Club and San Francisco Baykeeper (collectively, “Proposed Intervenors”) request the Court grant them leave to intervene as of right, or in the alternative, permission to intervene, in the above-captioned case. Proposed Intervenors seek to protect their significant interests in the validity of Oakland City Ordinance No. 13385 (“Ordinance”) and Resolution No. 86234 (“Resolution”). Proposed Intervenors have worked for years to protect the health and environment of communities in Oakland, and they supported adoption of the Ordinance and Resolution as part of these efforts.

II. BACKGROUND

In the summer of 2016, the Oakland City Council adopted the Ordinance and its companion Resolution to prohibit the handling or storage of coal or petroleum coke (“coke” or “petcoke”) at bulk material facilities in Oakland—including at a facility proposed for development at the former Oakland Army Base. Compl. (ECF #6) ¶ 47; Def.’s Req. for Judicial Notice (“Def.’s RJN”), Exs. B (ECF #20-2), C (ECF #20-3). Enacted after secret, back-door plans to develop a coal and coke facility at the Army Base were exposed, the Ordinance and Resolution reflect the City Council’s determinations that “Storing or Handling of Coal or Coke would have substantial public health and safety impacts to Oakland Constituents . . . and would create conditions substantially dangerous to the health and/or safety of such persons.” Def.’s RJN Ex. B (ECF #20-2) at 6 (statement of “Findings” in § 8.60.020(B)(1)(d)).

Proposed Intervenor Sierra Club is a nonprofit environmental organization that supported adoption of the Ordinance and Resolution. Sierra Club is a national nonprofit organization of nearly 700,000 members, including more than 150,000 members in California. King Decl. ¶ 2. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. King Decl. ¶ 2. Consistent with its mission, Sierra Club is committed to stopping the many environmental and human health impacts associated with coal and fossil fuels. King Decl. ¶¶ 4, 5, 7; Lewandowski Decl. ¶¶ 6, 7. Sierra Club has members residing in

1 Oakland who live, work, and recreate near the former Army Base, and who have an interest in
 2 ensuring that their community remains a safe and healthy place. King Decl. ¶¶ 1, 2, 4–7;
 3 Lewandowski Decl. ¶¶ 2, 3, 6, 7.

4 Proposed Intervenor San Francisco Baykeeper (“Baykeeper”) is a regional nonprofit
 5 organization that also supported the Ordinance and Resolution. Baykeeper’s mission is to protect and
 6 enhance the water quality of the San Francisco Bay-Delta estuary and its watershed for the benefit of
 7 its ecosystems and the surrounding human communities. Choksi-Chugh Decl. ¶ 6. As part of this
 8 goal, Baykeeper works to ensure that state and federal environmental laws are implemented and
 9 enforced. *Id.* ¶ 7. Baykeeper has over 5,000 members and supporters who primarily reside in the San
 10 Francisco Bay Area, most of whom have longstanding and ongoing personal interests in the mission
 11 of the organization because they live, work, and recreate in or around the San Francisco Bay. *Id.* ¶ 8.
 12 Baykeeper’s members also live, work, and recreate near the former Army Base, and have an interest
 13 in ensuring that their community can be a safe and healthy place. Choksi-Chugh Decl. ¶¶ 9, 15–20;
 14 Durkee Decl. ¶¶ 7–9, 15, 17–19.

15 In April 2015, Oakland community members, including Proposed Intervenor, learned for the
 16 first time of plans to redevelop the former Oakland Army Base for purposes of exporting coal.
 17 Choksi-Chugh Decl. ¶ 10. According to an April 7, 2015 article in the *Richfield Reaper*, a local Utah
 18 newspaper, the Utah Permanent Community Impact Fund Board had approved a \$53 million loan to
 19 four Utah counties—the coal-producing counties of Sevier, Sanpete, Carbon, and Emery—to allow
 20 them to purchase an interest in a portion of the Army Base redevelopment project known as West
 21 Gateway (the “Terminal”). Choksi-Chugh Decl., Ex. 1 at 2 (*Richfield Reaper* article). According to
 22 Malcolm Nash, the economic development director of Sevier County, this financial interest in and
 23 dedicated shipping capacity at the Terminal would be used to “find[] a new home for . . . coal.” *Id.*
 24 Proposed Intervenor sought to bring this information to the attention of the City Council and the
 25 broader public. King Decl. ¶ 4.

26 On September 21, 2015, the Oakland City Council held the first of several public hearings on
 27 the potential health and safety impacts of coal and coke products in the City and the City’s ability to
 28 regulate these products. Choksi-Chugh Decl. ¶ 14a; Compl. (ECF #6) ¶ 37. Proposed Intervenor

submitted four separate comment letters prior to the hearing, supported by extensive attachments, including expert reports. *See* Yarnall Loarie Decl., Exs. 1 (letter dated Sept. 2, 2015), 2 (letter dated Sept. 14, 2015), and 3 (letter dated Sept. 21, 2015); Choksi-Chugh Decl., Ex. 2 (letter dated Sept. 21, 2015). Proposed Intervenor also gave oral testimony at the public hearing concerning expected harms from the handling or storage of coal or coke. Choksi-Chugh Decl. ¶ 14a. Subsequently, Proposed Intervenor submitted a fifth comment letter to the City on October 6, 2015. Yarnall Loarie Decl., Ex. 4.

On October 2, 2015, Proposed Intervenor and others filed suit against the City of Oakland in the Alameda County Superior Court to compel the City of Oakland to prepare a supplemental or subsequent Environmental Impact Report (“EIR”) in order to evaluate the environmental impacts of a coal storage and handling facility, which had not been contemplated or analyzed when the original EIR for the Army Base redevelopment was completed. Yarnall Loarie Decl., Ex. 7 (verified petition for writ of mandate in Alameda Superior Court case no. RG15788084); Choksi-Chugh Decl. ¶ 12. On December 1, 2015, all parties filed a joint stipulation to voluntarily dismiss that action after the plaintiffs, including Proposed Intervenor, “learned of circumstances and information of which they were previously unaware from [the City’s] demurrer papers.” Yarnall Loarie Decl., Ex. 9 at 2 (joint stipulation). Specifically, the City acknowledged it was evaluating both “discretionary decisions it may take in the future with respect to” the Terminal and “the scope of additional environmental review, if any,” for future decisions. Yarnall Loarie Decl., Ex. 8 at 9, n.8 (City’s demurrer). Despite these acknowledgments, the City continues to contest Proposed Intervenor’s view that the City necessarily is required under the California Environmental Quality Act (“CEQA”) to conduct additional environmental review for the Oakland Army Base; the City’s contrary position is reserved in the joint stipulation agreement dismissing the case. *See, e.g., id.*

Independent of Proposed Intervenor’s CEQA lawsuit, the City retained two experts to evaluate the health and safety impacts of coal and petcoke storage and handling in Oakland. In or around November 2015, City Councilmember Dan Kalb retained Zoe Chafe to prepare a report evaluating the health and safety impacts of the proposed bulk coal facility on the Terminal property. Compl. (ECF #6) ¶¶ 97, 98. On May 3, 2016, City Council itself resolved to retain a private

consultant in order to analyze the potential health and safety impacts of coal and petcoke storage, handling, and/or transport in Oakland, and subsequently hired Environmental Science Associates to prepare a report. *Id.* ¶¶ 40, 41, 45.

On June 27, 2016, City Council held a public hearing on the Ordinance and Resolution. Compl. (ECF #6) ¶ 47. Proposed Intervenor submitted another written comment letter to the City on the date of the hearing. Yarnall Loarie Decl., Ex. 5 (letter dated June 27, 2016). Proposed Intervenor's staff and members also attended the hearing and gave oral testimony. King Decl. ¶ 4; Choksi-Chugh Decl. ¶ 14c. At the end of the meeting, City Council voted to adopt the Resolution and to introduce the Ordinance. Compl. (ECF #6) ¶ 47; Choksi-Chugh Decl. ¶ 14c.

On July 19, 2016, City Council held its final hearing on the Ordinance. Proposed Intervenor submitted yet another public comment letter to City Council on that date—their seventh on the subject—and Proposed Intervenor's members and staff attended the hearing and gave oral testimony. Yarnall Loarie Decl., Ex. 6 (letter dated July 19, 2016); King Decl. ¶ 4; Choksi-Chugh Decl. ¶ 14d. At the conclusion of this hearing, City Council voted to adopt the Ordinance. Compl. (ECF #6) ¶ 47; Def.'s RJN, Ex. B (ECF #20-2) at 14.²

Plaintiff OBOT filed this action on December 7, 2016. Compl. (ECF #6). OBOT holds the rights to redevelop land at the former Oakland Army Base, including at the Terminal. *Id.* ¶ 3. The Complaint alleges that the Ordinance and Resolution violate the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, and that they are preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. §§ 10101 *et seq.*, the Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. §§ 5101 *et seq.*, and the Shipping Act of 1984, 46 U.S.C. §§ 40101 *et seq.* Compl. (ECF #6) ¶¶ 125–60. The Complaint further alleges that the City breached its contract with OBOT by adopting the Ordinance and Resolution. *Id.* ¶¶ 161–63.

III. STANDARDS FOR INTERVENTION

The Ninth Circuit has established a four-part test for deciding applications for intervention as of right under Federal Rule of Civil Procedure 24(a):

² The Complaint incorrectly alleges the Ordinance was adopted on June 27, 2016. Compl. (ECF #6) ¶ 47. It was introduced on June 27, 2016, and passed on July 19, 2016. Def.'s RJN, Ex. B (ECF #20-2) at 14.

(1) the motion must be timely; (2) the applicant must claim a “significantly protectable” interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant’s interest must be inadequately represented by the parties to the action.

Wilderness Soc’y v. U.S. Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011) (quoting *Sierra Club v. U.S. Env’tl. Prot. Agency*, 995 F.2d 1478, 1481 (9th Cir. 1993)). If an applicant meets these standards, they must be permitted to intervene. *Yniguez v. Ariz.*, 939 F.2d 727, 731 (9th Cir. 1991) (citing *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527 (9th Cir. 1983)). An applicant need not separately establish Article III standing. *Vivid Entm’t, LLC v. Fielding*, 774 F.3d 566, 573 (9th Cir. 2014).

Rule 24(a) is construed “broadly in favor of proposed intervenors,” taking into account “practical and equitable considerations.” *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (citations omitted). Rule 24(a) does not require a specific legal or equitable interest, and “the ‘interest’ test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). The allegations of a proposed intervenor must be credited as “true absent sham, frivolity or other objections.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

Additionally, under Rule 24(b)(1)(B), courts have “broad discretion” to grant permissive intervention to applicants that, through a timely motion, assert a claim or defense that shares a common question of law or fact with the principal action. *County of Orange v. Air Cal.*, 799 F.2d 535, 539 (9th Cir. 1986) (citation omitted). In exercising its discretion, a court must consider whether intervention will cause undue delay or prejudice existing parties. *See Fed. R. Civ. P. 24(b)(1)(B)(3)*.

IV. ARGUMENT

For the following reasons, the Court should grant Proposed Intervenors intervention as of right under Federal Rule of Civil Procedure 24(a), or, in the alternative, the Court should grant permissive intervention under Rule 24(b).

A. The Court should grant intervention as of right.

1. The motion is timely.

A motion to intervene under Rule 24(a) must be timely. Fed. R. Civ. P. 24(a)(2). Timeliness is evaluated according to three factors: “(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.” *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004) (quoting *Cal. Dep’t of Toxic Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002)). When a motion is made “at an early stage of the proceedings,” it follows that the motion will neither prejudice other parties nor delay the proceeding. *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011).

Proposed Intervenor’s motion is timely because this case is in its earliest stages. The Complaint was filed on December 7, 2016. (ECF #6). This motion is being filed just a little more than two months later, shortly after the Defendant City filed its first responsive pleading. No discovery has occurred, and the Case Management Statement is not due until February 28. *See* Clerk’s Notice (ECF #15). No substantive matters have been heard or ruled upon. In addition, in order to avoid any disruption or delay in the proceedings, Proposed Intervenor has noticed the hearing for this motion on the same day that the City has noticed the hearing for its motion to dismiss, so that all motions may be heard together. *See* Def.’s Mot. to Dismiss (ECF #19).

Because this motion is filed in the earliest stages of this action, the motion is timely and granting intervention will neither prejudice other parties nor will it cause delay. As the Ninth Circuit has explained: “the parties would not have suffered prejudice from the grant of intervention at that early stage, and intervention would not cause disruption or delay in the proceedings.” *Citizens for Balanced Use*, 647 F.3d at 897 (finding motion timely when filed three months after the complaint and less than two weeks after defendant filed its answer); *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (holding motion timely when filed four months after complaint and two months after answer, but “before any hearings or rulings on substantive matters”); *Nat. Res. Defense Council v. McCarthy*, No. 16-cv-02184-JST, 2016 WL 6520170, at *3 (N.D. Cal. Nov. 3, 2016) (finding motion timely when filed before answer and “any substantive orders”).

1 **2. Proposed Intervenorors have protectable interests relating to the validity of**
 2 **the Ordinance and Resolution.**

3 Proposed Intervenorors satisfy the second element of intervention by right because they assert
 4 multiple “significantly protectable” interests related to the property and transaction which are the
 5 subjects of the action. *Wilderness Soc’y*, 630 F.3d at 1177. The interest test is a threshold question,
 6 and does not require a specific legal or equitable interest. *Id.* at 1179. Nor does it require that the
 7 asserted interest be protected by the statutes under which litigation is brought. *Id.* Instead, “the
 8 operative inquiry should be whether the ‘interest is protectable under some law’ and whether ‘there
 9 is a relationship between the legally protected interest and the claims at issue.’” *Id.* at 1180 (quoting
 10 *Sierra Club*, 995 F.2d at 1484). An applicant for intervention satisfies the interest test “if it will
 11 suffer a practical impairment of its interests as a result of the pending litigation.” *California ex rel.*
 12 *Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). Furthermore, at least one circuit has
 13 held that when the “significant public interests” associated with environmental quality are at stake,
 14 the interest requirement for intervention may be relaxed. *San Juan County v. United States*, 503 F.3d
 15 1163, 1201 (10th Cir. 2007) (citing *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 129,
 16 136 (1967)).

17 **a. Proposed Intervenorors supported passage of the Ordinance and**
 18 **Resolution and participated throughout the legislative process.**

19 Proposed Intervenorors have an interest in this litigation because they worked extensively to
 20 secure the passage of the Ordinance and Resolution. In fact, Proposed Intervenorors have worked since
 21 early 2015 to ensure that communities in Oakland will be protected from the adverse health impacts
 22 of coal storage and handling facilities.

23 It is well-settled in the Ninth Circuit that “[a] public interest group is entitled as a matter of
 24 right to intervene in an action challenging the legality of a measure it has supported.” *Idaho Farm*
 25 *Bureau Fed’n*, 58 F.3d at 1397 (citations omitted). For example, in *Sagebrush Rebellion, Inc. v.*
 26 *Watt*, the Audubon Society was entitled to intervene in an action challenging the creation of a
 27 conservation area the Society had supported. 713 F.2d at 527. The Society had actively participated
 28 in the administrative process surrounding the designation of the conservation area, and on those
 grounds the Ninth Circuit held that “there can be no serious dispute in this case concerning . . . the

1 existence of a protectable interest on the part of the applicant.” *Id.* at 528; *accord Idaho Farm*
 2 *Bureau Fed’n*, 58 F.3d at 1397–98 (finding environmental groups that were active in the
 3 administrative process leading to endangered species listing were entitled to intervene in litigation
 4 seeking to invalidate listing); *see also Prete v. Bradbury*, 438 F.3d 949, 955 (9th Cir. 2006)
 5 (allowing “chief petitioner” and “main supporter” of ballot measure to intervene in action
 6 challenging measure’s constitutionality); *Coal. of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep’t*
 7 *of Interior*, 100 F.3d 837, 841 (10th Cir. 1996) (wildlife photographer with consistent record of
 8 advocating for protection of spotted owl entitled to intervene in case challenging the listing of the
 9 owl as endangered species).

10 Proposed Intervenors supported the passage of the Ordinance and Resolution that this suit
 11 challenges. Proposed Intervenors learned of Plaintiff’s plans to store and handle coal at the Terminal
 12 in April 2015, Choksi-Chugh Decl. ¶ 10, and sought to bring this information to light by informing
 13 the City Council and the broader public, King Decl. ¶ 4. Proposed Intervenors sent seven comment
 14 letters to the City over the course of eleven months regarding the health and safety impacts of coal
 15 storage and handling facilities, supported by extensive attachments including expert reports. Yarnall
 16 Loarie Decl., Exs. 1–6; Choksi-Chugh Decl., Ex. 2. Representatives of Proposed Intervenors also
 17 attended and provided oral testimony at three public hearings. King Decl. ¶ 4; Choksi-Chugh Decl.
 18 ¶ 14. Proposed Intervenors have a protectable interest in seeing the Ordinance and Resolution
 19 upheld, and this interest would be practically impaired by an adverse decision in this case. *See* King
 20 Decl. ¶¶ 1, 2, 4–7; Choksi-Chugh Decl. ¶¶ 10, 11, 14. As champions of the Ordinance and
 21 Resolution, Proposed Intervenors are entitled to intervene as of right in this suit that challenges the
 22 validity of these enactments.

23 **b. Proposed Intervenors’ members are precisely those individuals the**
 24 **Ordinance was enacted to protect.**

25 Proposed Intervenors also have a protectable interest in this case because their members are
 26 “the intended beneficiaries of this law.” *California ex rel. Lockyer*, 450 F.3d at 441. Public interest
 27 groups have a protectable interest in litigation when the underlying action challenges a legislative
 28 measure that was intended to protect their members. *Andrus*, 622 F.2d at 438–39 (finding a

1 protectable interest for public interest groups where “[t]he individual members . . . are precisely
 2 those Congress intended to protect . . . and precisely those who will be injured” if the challenged law
 3 were invalidated). For environmental groups seeking to intervene to defend a law, “[i]t is enough
 4 that the [groups’] members benefit from the challenged legislation by way of improved air quality
 5 and health.” *Cal. Dump Truck Owners Ass’n v. Nichols*, 275 F.R.D. 303, 307 (E.D. Cal. 2011).

6 Here, Proposed Intervenor’s members are precisely those individuals whom the Ordinance
 7 and Resolution were designed to protect, and they are precisely those who will be injured if the
 8 Ordinance and Resolution are invalidated. The Oakland City Council determined the storage and
 9 handling of coal would pose substantial dangers to the health and safety of “citizens, residents,
 10 workers, employers, and/or visitors of the City of Oakland.” Def.’s RJN, Ex. B (ECF #20-2) at 4
 11 (describing Ordinance’s “Purpose” in § 8.60.010). Proposed Intervenor’s members fall within that
 12 sphere of protection, and include both residents of Oakland, King Decl. ¶¶ 2, 4, Lewandowski Dec.
 13 ¶ 2, Choksi-Chugh Decl. ¶¶ 9, 15, 16, and people who regularly visit and work in the vicinity of the
 14 Terminal, King Decl. ¶¶ 1, 2, 4–6, Lewandowski Dec. ¶ 7, Choksi-Chugh Decl. ¶¶ 17–20, Durkee
 15 Decl. ¶¶ 7–9, 14, 15, 17–19. Proposed Intervenor has demonstrated a protectable interest that
 16 would be impaired by an adverse decision in this case because “[their] members benefit from the
 17 challenged legislation by way of improved air quality and health.” *Cal. Dump Truck Owners Ass’n*,
 18 275 F.R.D. at 307.

19 **c. Proposed Intervenor’s environmental concerns constitute a legally**
 20 **protectable interest.**

21 Proposed Intervenor’s concern for the environment constitutes an independent protectable
 22 interest sufficient to support intervention. *See Citizens for Balanced Use*, 647 F.3d at 897
 23 (“Applicants have a significant protectable interest in conserving and enjoying the wilderness
 24 character of the Study Area.”); *United States v. Carpenter*, 526 F.3d 1237, 1240 (9th Cir. 2008)
 25 (“[I]ntervenor was entitled to intervene because they had the requisite interest in seeing that the
 26 wilderness area be preserved for the use and enjoyment of their members.”); *see also WildEarth*
 27 *Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010) (stating it is “‘indisputable’ that
 28

1 a prospective intervenor’s environmental concern is a legally protectable interest”) (quoting *San*
 2 *Juan County*, 503 F.3d at 1199).

3 Proposed Intervenors are environmental advocacy organizations with demonstrated interests
 4 in protecting and improving air quality in the City of Oakland, and preserving the water quality of
 5 the San Francisco Bay. King Decl. ¶¶ 2, 4; Choksi-Chugh Decl. ¶¶ 6, 7. Proposed Intervenors and
 6 their members are concerned about the negative health impacts that coal dust from a coal terminal
 7 could have on the surrounding community, and the impacts that coal dust could have on water
 8 quality. King Decl. ¶¶ 4–6; Durkee Decl. ¶ 15. Sierra Club has worked to address air quality at the
 9 Port of Oakland since at least 2008. Lewandowski Decl. ¶¶ 4–6. Sierra Club has long taken an
 10 interest in coal and coke nationally and in California in particular, and has submitted numerous
 11 public records requests in Oakland to uncover information about coal and coke at the Terminal. King
 12 Decl. ¶ 4. Likewise, Baykeeper has a history of working on water quality issues in Oakland, and has
 13 brought citizen enforcement actions under the Clean Water Act against multiple industrial facilities
 14 in Oakland for illegally discharging pollutants into the Bay. Choksi-Chugh Decl. ¶¶ 7, 21b.
 15 Baykeeper also initiated an enforcement action against the East Bay Municipal Utilities District and
 16 its city satellites, including Oakland, to reduce sewage discharges into San Francisco Bay. *Id.* ¶ 21a.

17 In addition, Proposed Intervenors’ have an interest in “conserving and enjoying” the
 18 environment surrounding the Terminal site. *Citizens for Balanced Use*, 647 F.3d at 897. Proposed
 19 Intervenors’ members recreate in and enjoy the environment surrounding the Terminal. Members
 20 enjoy sailing, fishing, and kayaking on the waters adjacent to the Terminal. King Decl. ¶¶ 4–6;
 21 Lewandowski Decl. ¶ 7; Choksi-Chugh Decl. ¶¶ 8, 9, 17, 18; Durkee Decl. ¶¶ 7–9, 17. Their use and
 22 enjoyment of the recreational opportunities provided by the Bay will be harmed if the Ordinance is
 23 invalidated and a coal terminal is built and operated. King Decl. ¶ 7; Lewandowski Decl. ¶¶ 7, 9;
 24 Choksi-Chugh Decl. ¶¶ 8, 9, 17, 18; Durkee Decl. ¶¶ 17, 18. In addition, members enjoy wildlife in
 25 the area near the Terminal, and have specific aesthetic concerns that would be harmed if the
 26 Terminal is built and operated as planned. King Decl. ¶¶ 6, 7; Choksi-Chugh Decl. ¶¶ 19, 20; Durkee
 27 Decl. ¶¶ 18, 19.

3. The disposition of this case would impair Proposed Intervenor’s ability to protect their interests.

Rule 24(a) requires intervenors to show that “disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a)(2). If a proposed intervenor “would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.” *Sw. Ctr. For Biological Diversity*, 268 F.3d at 822 (quoting Fed. R. Civ. P. 24 advisory committee’s notes). This inquiry “presents a minimal burden,” *WildEarth Guardians*, 604 F.3d at 1199, and a determination of impairment tends to follow once intervenors have satisfied the interest test’s inquiry of whether the applicant “will suffer a practical impairment of its interests as a result of the pending litigation.” *California ex rel. Lockyer*, 450 F.3d at 441; *id.* at 442 (“Having found that appellants have a significant protectable interest, we have little difficulty concluding that the disposition of this case may, as a practical matter, affect it.”).

As described in each of the sections above, an adverse decision in this case would impair Proposed Intervenor’s ability to protect their interests, and Proposed Intervenor has satisfied this third requirement for intervention as of right.

4. Intervenor’s interests are not adequately represented by existing parties.

A proposed intervenor merely needs to show that the representation of its interests “may be” inadequate, and “the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *see also California v. Tahoe Reg’l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986) (“The applicant is required only to make a minimal showing that representation of its interests may be inadequate.”).

“The ‘most important factor’ in assessing the adequacy of representation is ‘how the interest compares with the interests of existing parties.’” *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), *as amended* (May 13, 2003)). Specifically, courts may consider “whether the interest of a present party is such that it will *undoubtedly* make *all* of a proposed intervenor’s arguments.” *Arakaki*, 324 F.3d at 1086 (emphasis added); *see also Sw. Ctr. for Biological Diversity*, 268 F.3d at 824 (“It is sufficient for Applicants to

1 show that, because of the difference in interests, it is likely that Defendants will not advance the
2 same arguments as Applicants.”).

3 The City of Oakland cannot adequately represent the specific interests of Proposed
4 Intervenor while simultaneously representing the broad public interests of its constituents. “[I]t is
5 ‘on its face impossible’ for a government agency to carry the task of protecting the public’s interests
6 and the private interests of a prospective intervenor.” *WildEarth Guardians*, 604 F.3d at 1200. This
7 is true even when the would-be intervenors are public interest groups asserting a subset of the broad
8 interests that the government must consider. *See Californians For Safe & Competitive Dump Truck*
9 *Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998) (finding inadequate representation by
10 state agency where “interests of [organization’s] members were potentially more narrow and
11 parochial than the interests of the public at large”); *In re Sierra Club*, 945 F.2d 776, 779–80 (4th Cir.
12 1991) (Sierra Club’s interests not adequately represented by state environmental agency that “may
13 share some objectives” because agency is obligated to represent all citizens of the state, not just
14 “subset of citizens” that supported the regulation).

15 The City is obligated to balance broad public interests and represent all of its constituents,
16 while Proposed Intervenor represents only a small subset of those interests—namely, environmental
17 protection and public health—and represent only the subset of the City’s constituents who supported
18 the Ordinance. The City is obligated to encourage economic growth, manage the City’s finances,
19 develop housing, maintain infrastructure, and manage benefit programs, among many other goals.
20 The City must balance all of these objectives and simultaneously represent all of its constituents,
21 while Proposed Intervenor focuses on environmental protection, public health, and representing its
22 members who supported the Ordinance. The City’s broad interests are such that it may not make all
23 of Proposed Intervenor’s arguments, and the City may not be capable and willing to make such
24 arguments. *Arakaki*, 324 F.3d at 1086. In fact, the motions to dismiss filed by the City and by
25 Proposed Intervenor assert separate grounds for dismissal, making it clear that in this case, the City
26 has not made all Proposed Intervenor’s arguments. *Compare* Def.’s Mot. to Dismiss (ECF #19), *with*
27 Proposed Intervenor’s Mot. to Dismiss (filed concurrently with this Motion).

Representation by the City may also be inadequate because the City and Proposed Intervenor have a history of adversity and prior litigation on the subject matter of this case. The Ninth Circuit has repeatedly found that in cases where environmental groups have been involved in advocacy directed at the government, the groups were entitled to intervene as a matter of right because they could not rely on the government to represent them adequately. *See Citizens for Balanced Use*, 647 F.3d at 898–901 (refusing to apply presumption of adequate representation by government when government was simultaneously appealing separate action on the same subject matter brought by the same environmental group that sought to intervene); *Idaho Farm Bureau Fed’n*, 58 F.3d at 1398 (finding inadequate representation of environmental group’s interests in action challenging agency decision, when that decision was originally compelled by environmental group’s lawsuit); *see also Andrus*, 622 F.2d at 439 (finding inadequate representation where “the [government] began its rulemaking only reluctantly after [proposed intervenor] brought a law suit against it”).

The present case is analogous. Proposed Intervenor has engaged in extended advocacy directed at the City, aiming to compel the City to conduct additional environmental review of the Terminal should it be used for coal storage or handling. In October 2015, Proposed Intervenor (along with two other groups) brought suit against the City in state court seeking declaratory and injunctive relief under CEQA that would require the City to examine and address the environmental and health impacts of a coal and coke storage and handling facility. Choksi-Chugh Decl. ¶ 12; Yarnall Loarie Decl., Ex. 7 (verified petition). Although the case was voluntarily dismissed by stipulation, the City does not accept Proposed Intervenor’s position that coal may not be stored or handled at the former Oakland Army base unless or until further environmental analysis is completed pursuant to CEQA. Yarnall Loarie Decl., Ex. 8, at 9 n.8 (statement in City’s demurrer, reserving its position on when CEQA review may be required—if ever). This prior and ongoing adversity between the City and Proposed Intervenor on the subject of the Terminal indicates that their interests are sufficiently different, and the City will not “undoubtedly” make all of Proposed Intervenor’s arguments. *See Arakaki*, 324 F.3d at 1086. Consequently, Proposed Intervenor has

1 met the “minimal burden” of showing that the City’s representations of its interests may be
 2 inadequate. *Trbovich*, 404 U.S. at 538 n.10.

3 In addition to examining the interests of existing parties, courts may consider whether a
 4 proposed intervenor would provide any necessary elements in the proceeding that other parties
 5 would neglect. *Arakaki*, 324 F.3d at 1086. This factor also weighs heavily in favor of permitting
 6 intervention in this case. Environmental groups have been found to have special expertise and offer a
 7 materially different perspective from governmental entities. *Sagebrush Rebellion, Inc.*, 713 F.2d at
 8 528. Proposed Intervenors have worked since early 2015 to ensure that communities in Oakland will
 9 be protected from the adverse health and environmental impacts of coal storage and handling
 10 facilities, and consequently have deep familiarity with those communities and the history of the
 11 specific Terminal project. King Decl. ¶¶ 4, 5; Choksi-Chugh Decl. ¶¶ 10, 11. Additionally, Proposed
 12 Intervenors have extensive subject matter expertise on environmental issues, including water quality
 13 in the San Francisco Bay, Choksi-Chugh Decl. ¶ 21, and the specific air and water quality impacts of
 14 coal, King Decl. ¶ 4. Consequently, Proposed Intervenors will “offer important elements to the
 15 proceedings that the existing parties would likely neglect.” *Sw. Ctr. for Biological Diversity*, 268
 16 F.3d at 823.

17 Because each of the four requirements under Rule 24(a)(2) is satisfied, the Court should
 18 grant Proposed Intervenors intervention as of right.

19 **B. Alternatively, the Court should grant permissive intervention.**

20 Proposed Intervenors also satisfy the requirements for permissive intervention under Rule
 21 24(b). Permissive intervention is appropriate when (1) movant files a timely motion; (2) prospective
 22 intervenor has a claim or defense that shares a common question of law or fact with the main action;
 23 and (3) intervention will not unduly delay or prejudice existing parties. Fed. R. Civ. P. 24(b)(2)–(3).

24 Here, Proposed Intervenors intend to address the same questions of law that are the heart of
 25 this litigation: whether the Ordinance violates the Commerce Clause; whether it is preempted under
 26 ICCTA, HMTA, or the Shipping Act; and whether it breaches the Development Agreement. *See*
 27 *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110–11 (9th Cir. 2002) *abrogated on other*
 28 *grounds by Wilderness Soc’y*, 630 F.3d 1179 (conservation groups met test for permissive

intervention where they asserted defenses “directly responsive” to plaintiffs’ complaint). This motion is timely, and intervention will not cause delay or prejudice the existing parties. *See* discussion *supra* at 6. Furthermore, as also discussed above, Proposed Intervenors may assist the Court in resolving this case by providing expertise on coal, air, and water quality issues. *See Kootenai Tribe*, 313 F.3d at 1111 (noting “the presence of intervenors would assist the court”); *see also* discussion *supra* at 10, 14. Accordingly, even if the Court does not grant intervention as of right, permissive intervention is warranted here.

V. CONCLUSION

For the foregoing reasons, Proposed Intervenors Sierra Club and San Francisco Baykeeper have satisfied the requirements for intervention as a matter of right under Rule 24(a), and alternatively, permissive intervention under Rule 24(b). Proposed Intervenors therefore respectfully request that the Court grant this motion to intervene.

For reasons discussed in the notice of motion, Proposed Intervenors also request that if intervention is granted, the Court accept Proposed Intervenors’ concurrently lodged Rule 12(b)(6) Motion to Dismiss instead of the lodged Proposed Answer.

DATED: February 16, 2017

Respectfully submitted,

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TABLE OF ATTACHMENTS

Declaration of Raymond Durkee

Declaration of Sejal Choksi-Chugh

Exhibit 1 “Project could transform local coal market to international,” Richfield Reaper, April 7, 2015.

Exhibit 2 Public comment letter dated September 21, 2015.

Declaration of Brittany King

Declaration of Kent Lewandowski

Declaration of Jessica Yarnall Loarie

Exhibit 1 Public comment letter dated September 2, 2015.

Exhibit 2 Public comment letter dated September 14, 2015.

Exhibit 3 Public comment letter dated September 21, 2015.

Exhibit 4 Public comment letter dated October 6, 2015.

Exhibit 5 Public comment letter dated June 27, 2016.

Exhibit 6 Public comment letter dated July 19, 2016.

Exhibit 7 Verified Petition for Writ of Mandate under the California Environmental Quality Act, filed October 2, 2015, in *Communities for a Better Environment v. City of Oakland*, No. RG15788084 (Cal. Super. Ct., filed Oct. 2, 2015).

Exhibit 8 Respondent City of Oakland’s Memorandum of Points and Authorities in Support of Demurrer to Verified Petition for Writ of Mandate, filed November 9, 2015, in *Communities for a Better Environment v. City of Oakland*, No. RG15788084 (Cal. Super. Ct., filed Oct. 2, 2015).

Exhibit 9 Joint Stipulation Regarding Voluntary Dismissal of Action, filed December 1, 2015, in *Communities for a Better Environment v. City of Oakland*, No. RG15788084 (Cal. Super. Ct., filed Oct. 2, 2015).

Proposed Answer

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OAKLAND BULK & OVERSIZED TERMINAL,
LLC,

Plaintiff,

v.

CITY OF OAKLAND,

Defendant,

and

SIERRA CLUB and SAN FRANCISCO
BAYKEEPER,

Proposed Defendant-Intervenors.

Case No. 16-cv-7014-VC

**DECLARATION OF SEJAL CHOKSI-
CHUGH IN SUPPORT OF PROPOSED
INTERVENORS' MOTION TO
INTERVENE**

Hearing: Apr. 20, 2017
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Place: Courtroom 4, 17th Floor

Action Filed: Dec. 7, 2016

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1 I, **Sejal Choksi-Chugh** do hereby declare as follows:

2 1. I have personal knowledge of the facts stated in this declaration, unless stated on information
3 and belief, and if called to testify as a witness, I could and would testify competently to the truth of
4 these facts.

5 2. I am employed by San Francisco Baykeeper ("Baykeeper") and have been for approximately
6 14 years. Since May 2015, I have served as the Executive Director and as Baykeeper, a public
7 advocate and primary spokesperson for San Francisco Bay. I provide strategic direction for
8 Baykeeper's policy, science, and litigation programs aimed at protecting San Francisco Bay and lead
9 all aspects of the organization's operations.

10 3. I joined Baykeeper as an attorney in September 2002, spearheading Baykeeper's pesticide
11 campaign, including efforts to secure the nation's first regulations to control agricultural pollution.

12 4. From 2004 through May 2015, I served in several capacities including as Baykeeper's
13 Program Director and Staff Attorney. During that time, I worked on countless issues to protect the
14 water quality of San Francisco Bay, including serving as a member of East Bay Municipal Utility
15 District's Blue Ribbon Panel, addressing systemic sewage collection problems. I was also appointed
16 by the Senate President Pro Tem to serve on California's Oil Spill Prevention & Response Technical
17 Advisory Committee.

18 5. I have lived in the Bay Area since 1998 when I moved here to attend law school at the
19 University of California, Berkeley School of Law ("UC Berkeley School of Law"). I hold a juris
20 doctorate with a specialization in Environmental Law from UC Berkeley School of Law and have a
21 bachelor of sciences in Anthropology from Emory University.

22 **1. San Francisco Baykeeper**

23 6. Baykeeper is a non-profit public benefit corporation dedicated to protecting and enhancing
24 the water quality of the San Francisco Bay-Delta Estuary ("San Francisco Bay") and its tributaries
25 for the benefit of its ecosystems and the surrounding human communities.

26 7. Baykeeper works to protect San Francisco Bay by advocating for more stringent regulation
27 of activities affecting water quality and better enforcement of existing environmental laws.
28 Specifically, Baykeeper participates in regulatory proceedings before the agency responsible for

1 protecting the water quality of San Francisco Bay, the San Francisco Bay Regional Water Quality
 2 Control Board ("Regional Board"); monitors and patrols the San Francisco Bay to identify sources
 3 of pollution; investigates and reports illegal discharges; actively supports effective enforcement of
 4 the Federal Clean Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1251 *et seq.*, by
 5 state and federal agencies; and, when necessary, supplements agency enforcement through citizen
 6 enforcement lawsuits.

7 8. Baykeeper has more than 5,000 members and supporters, most of whom reside in the San
 8 Francisco Bay Area and use San Francisco Bay and its shoreline for recreational, aesthetic,
 9 educational, conservation, and scientific purposes.

10 9. Some of Baykeeper's members reside near the former Oakland Army Base near the Port of
 11 Oakland where the Plaintiff in this action proposes to develop a bulk export terminal that will handle
 12 coal and petroleum coke. Baykeeper members also use the waterways in this area and adjoining
 13 lands to fish, sail, swim, hike and bicycle. Baykeeper members support the organization's efforts to
 14 protect the fisheries and natural resources of those waters.

15 **2. Baykeeper Has an Interest in Defending a Measure it has Supported, Championed, or**
 16 **Sponsored**

17 10. Baykeeper has opposed use of the former Oakland Army Base as a coal terminal since
 18 becoming aware on April 20, 2015 of an April 7, 2015 article in the *Richfield Reaper*. Because of
 19 this article and statements made by the developers, I and other Baykeeper staff learned that the Army
 20 Base developer had made a \$53 million deal with a Utah coal consortium to use 49 percent of the
 21 bulk terminal's reportedly 9 million ton annual capacity to export Utah coal.

22 a. Attached hereto as **Exhibit 1** is a true and correct copy of the April 7, 2015 article in
 23 the *Richfield Reaper* concerning the potential purchase of an interest in the Oakland
 24 Bulk & Oversized Terminal, as referenced, and available at
 25 [http://www.richfieldreaper.com/news/local/article_e13121f0-dd67-11e4-b956-](http://www.richfieldreaper.com/news/local/article_e13121f0-dd67-11e4-b956-3ff480cc1929.html)
 26 [3ff480cc1929.html](http://www.richfieldreaper.com/news/local/article_e13121f0-dd67-11e4-b956-3ff480cc1929.html).

27 11. Harms from the proposed coal terminal include air and water pollution from coal transport,
 28 handling, and storage; climate change disruption caused by the release of greenhouse gases from

1 burning coal overseas; and health and safety risks borne by workers handling the dusty, flammable
2 coal.

3 12. Baykeeper, along with the Asian Pacific Environmental Network, Communities for a Better
4 Environment, and Sierra Club, represented by Earthjustice, sued the City of Oakland in October
5 2015, seeking to reopen environmental review of the redevelopment project under the California
6 Environmental Quality Act (“CEQA”).

7 13. Baykeeper, along with the other environmental groups, dismissed the lawsuit voluntarily in
8 December 2015, after the City provided information in its demurrer papers about its expected
9 process for evaluation and approving construction on the terminal.

10 14. I, along with other Baykeeper staff and interns, submitted written comments and participated
11 in the Oakland City Council’s series of public hearings in support of an ordinance and resolution that
12 prohibited the handling or storage of coal or petroleum coke at bulk material facilities in Oakland.

- 13 a. Jessica Wan, a policy research intern with Baykeeper, attended the Oakland City
14 Council’s September 21, 2015 hearing regarding the public health and/or safety
15 impacts of coal or coal products in the City and the City’s ability to regulate those
16 products, and gave oral testimony concerning expected harms from the handling or
17 storage of coal or petroleum coke.
- 18 b. Attached hereto as **Exhibit 2** is a true and correct copy of a comment letter submitted
19 to the Oakland City Council by Ian Wren, Baykeeper’s Staff Scientist, and Jessica
20 Wan on behalf of Baykeeper dated September 21, 2015.
- 21 c. Baykeeper policy intern Shannon Burns attended and gave oral testimony at the
22 Oakland City Council hearing on June 27, 2016, upon conclusion of which, and after
23 consideration of a report and recommendation for options to address coal and coke
24 issues, the City Council voted to introduce an ordinance to ban certain activities
25 related to coal and coke and adopt a resolution applying the ordinance to the Oakland
26 Bulk & Oversized Terminal.
- 27 d. Erica Maharg, then Baykeeper Staff Attorney, now Baykeeper Managing Attorney,
28 attended and gave oral testimony at the July 19, 2016 Oakland City Council hearing

1 where the City Council unanimously adopted the ordinance to ban certain activities
2 related to coal and coke.

3 **3. Baykeeper's Members are People the Oakland City Council's Ordinance was Intended to**
4 **Protect.**

5 15. Some Baykeeper members live in close proximity to the proposed coal terminal and their
6 quality of life will be harmed if the terminal is built and operated as proposed.

7 16. Some Baykeeper members live throughout Oakland, and in West Oakland specifically, and
8 may be at greater risk of asthma or cardiovascular disease if the terminal is built and operated as
9 proposed.

10 **4. I, along with other Baykeeper Members, Have Recreational, Aesthetic, and Wildlife**
11 **Interests in the Bay near the Proposed Coal Terminal.**

12 17. Since joining Baykeeper's staff, I often patrol via boat on the Bay, including the area near the
13 proposed coal terminal, and enjoy the beauty and wildlife that it has to offer. Since becoming the
14 Executive Director, I boat on the Bay approximately once per week. I am often in Oakland in the
15 vicinity of the proposed coal terminal. I believe that my enjoyment of the Bay and its wildlife,
16 particularly in the area of the proposed coal terminal, will be significantly harmed if the terminal is
17 used to export coal or petroleum coke.

18 18. Some Baykeeper members recreate in the vicinity of the proposed coal terminal and their use
19 and enjoyment of the recreational opportunities provided by San Francisco Bay will be harmed if the
20 terminal is built and operated as proposed.

21 19. Some Baykeeper members have specific aesthetic concerns that will be harmed if the
22 terminal is built and operated as proposed.

23 20. Some Baykeeper members enjoy wildlife in the land and water near the proposed coal
24 terminal and their interest in that enjoyment will be harmed if the terminal is built and operated as
25 proposed.

5. Baykeeper Has a History of Working on Environmental Issues in Oakland and West Oakland

21. Baykeeper has worked extensively in Oakland and West Oakland to protect San Francisco Bay. Examples of Baykeeper's past work in Oakland include the following:

- a. East Bay Municipal Utilities District ("EBMUD") and satellites – Baykeeper initiated an enforcement action against EBMUD and its city satellites (including Oakland) to reduce sewage discharges to San Francisco Bay. The agreement resulting from that action requires scientific modeling and significant investment in infrastructure to upgrade the sewage system.
- b. Baykeeper has brought citizen enforcement actions under the Clean Water Act against several industrial facilities in Oakland for discharging heavy metals, total suspended sediment, and other pollutants in violation of the Industrial Stormwater Permit.

I declare under penalty of perjury pursuant to the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 13th day of February, 2017 at Oakland, California.


Sejal Choksi-Chugh

EXHIBIT 1

http://www.richfieldreaper.com/news/local/article_e13121f0-dd67-11e4-b956-3ff480cc1929.html

Project could transform local coal market to international

Apr 7, 2015



Malcolm Nash, Sevier County economic development director, holds up a concept drawing Monday in Richfield of a port facility. Sevier, Sanpete, Carbon and Emery counties are exploring the possibility of purchasing an interest in the port for international export of locally mined coal.

Coal from south central Utah may be on the cusp of finding a new, international customer base.

The Utah Permanent Community Impact Fund Board approved some \$53 million in loan funding for a project that would allow four counties — Sevier, Sanpete, Carbon and Emery — to purchase an interest in a port that is under development in Oakland, Calif.

The funding was approved during a CIB meeting hosted in Salt Lake City Thursday in an 8-2 vote.

“It’s all about finding a new home for Utah’s products — and in our neighborhood, that means coal,” said Malcolm Nash, Sevier County economic development director. He said the proposal has already received verbal nods of approval from Utah Gov. Gary Herbert and others.

“It is a different type of project,” Nash said. The proposal is for the CIB’s \$50 million to be used to pay for a portion of the construction of a \$250 million shipping port in Oakland. While CIB money would be used to fund the infrastructure, the four participating counties wouldn’t own the facility. Instead, they would own the right to use 49 percent of the port’s capacity for trans-Pacific shipping.

“The purchase of Sufco by Bowie [Resources] is what’s driving all of this,” Nash said. He said Bowie is interested in expanding its coal shipping capacity to international markets, which would make the coal industry in Utah viable over a longer period of time. Bowie is also affiliated with Trafigura, an international commodities shipping company with a focus on port infrastructure.

“There is a cliff,” Nash said. He said that by 2026 or 2027, the Intermountain Power Project near Delta is set to stop burning coal. This would be devastating to local mines if additional markets are not developed.

Coal from Sufco, located in Salina Canyon, is already shipped internationally, but on a limited basis. By purchasing a portion of the port’s capacity, the four partner counties would be able to use 49 percent of an estimated 750,000 tons of shipping capacity each year to ship coal and other products.

The project is still in a conceptual stage, and will take a lot of complex agreements in order

to work, Nash said.

“Three million of that is for paying attorney fees and setting up the organization,” Nash said. Currently, plans call for the four partner counties to develop an infrastructure coalition, which would be an independent organization. The coalition would be in charge of the financial end of the project, and act as a shield to the involved counties to protect taxpayers’ interests, Nash said.

If the project comes to fruition, it could help keep Sufco and other coal mines in the state viable for decades to come, as well as provide an additional revenue stream to the partner counties.

The project could also be scrapped, similar to a proposed \$3 billion rail line based in Uintah County. That project also relied on CIB funds, but was deemed financially unrealistic, so the funds were turned back to the CIB last year.

Those same funds are now being used for the port proposal.

Complementary projects

“We just kind of fell into it,” Nash said.

Nash said conversations with Bowie and members of the CIB about Sevier County’s ongoing rail project are what led to the proposal to buy into the Oakland port.

“The CFO of Bowie didn’t realize we had a rail project in the works,” Nash said. The county could have permits in hand for the rail project, 14 years in the making, later this year. When representatives of the CIB and Bowie found out about the possibility of a permitted rail project, it led them to discussions about the port, which has also been under development for years.

“We didn’t know what the other was doing,” Nash said. He said while the rail would be complementary to the port, the projects are not dependent on each other. The rail would also have a different partnership of counties — Sevier, Sanpete and Juab.

“With the rail, it comes down to there being enough freight to pay for it,” Nash said. “If there comes a time that rail is needed, it will be Bowie’s decision, not the county’s.”

The proposed rail line would run from Salina to the spike in Levan, cutting the distance coal needs to travel via truck by more than 40 miles. The idea is to reduce transportation costs for coal, but if the \$110 million project doesn’t have enough freight on it to make it financially viable, it won’t happen.

Either way the rail project goes, the port project will likely happen — the only question is whether south central Utah will be a partner in it.

Port development

The proposed port would be located on a bow tie shaped piece of land in San Francisco Bay. Formerly occupied by an Army base, the land is owned by the city of Oakland. The company, Terminal Logistics Solutions, has signed a 66-year lease to develop the property into a port.

The port will cost approximately \$250 million to build, which is where CIB’s funds would be invested.

“Normally, it doesn’t cost that much,” Nash said. He said Bowie’s representatives insisted that the facility be completely covered, to mitigate any concerns about coal dust, resulting in the hefty price. This means the railcars used to ship the coal would also have to be covered.

As of right now, the four partner counties’ role in the port is in a critical 90-day stage, where it is being reviewed by the Utah Attorney General’s Office as well as legal counsel hired by the partner counties, said Gary Mason, Sevier County commissioner. He said people who have experience in port development would scrutinize the economics of the project before anything is committed.

Racing to a deadline

The partner counties first found out about the port opportunity in February, but the clock is ticking on the project.

Bowie has an option on the port that expires in June. If everything works out, the partner counties will be able to use the CIB monies to help fund the project. Revenue generated by shipping through the port would be used to pay back the CIB loan.

“There is no general fund tax money involved in this project,” Mason said. He said protecting the county’s interest is the key concern.

“It’s open ended,” Mason said. “If there are other products [in the region] that could benefit from the port, they could also use it.” Mason said salt, potash and other commodities could be shipped through the port.

“This benefits the entire state,” Mason said. “First, we have to assess if we can prove to ourselves and everyone else that this is a viable project.”

If the project does not come to fruition, the CIB money would be turned back over for use on another project. If the project proves to be practical, it could be functioning and shipping Utah coal by summer 2017.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OAKLAND BULK & OVERSIZED TERMINAL,
LLC,

Plaintiff,

v.

CITY OF OAKLAND,

Defendant,

and

SIERRA CLUB and SAN FRANCISCO
BAYKEEPER,

Proposed Defendant-Intervenors.

Case No. 16-cv-7014-VC

**DECLARATION OF RAYMOND
DURKEE IN SUPPORT OF
PROPOSED INTERVENORS'
MOTION TO INTERVENE**

Hearing: Apr. 20, 2017
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Place: Courtroom 4, 17th Floor

Action Filed: Dec. 7, 2016

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4 *Attorney for Proposed Defendant-Intervenor*
Sierra Club
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1 I, **Raymond Durkee**, do hereby declare as follows:

2 1. I have personal knowledge of the facts stated in this declaration, unless stated on information
3 and belief, and if called to testify as a witness, I could and would testify competently to the truth of
4 these facts.

5 2. I am a current member in good standing of San Francisco Baykeeper (“Baykeeper”). I first
6 donated to Baykeeper almost 20 years ago, but have become more involved over the last two or three
7 years. I am currently a volunteer skipper for Baykeeper.

8 3. I support Baykeeper’s efforts to protect the fisheries and natural resources of San Francisco
9 Bay (“Bay”), including the Oakland Estuary.

10 4. I first volunteered with Baykeeper in 2015 and have done skippering and maintenance of
11 Baykeeper’s vessel, and some paperwork filing.

12 5. I first moved to the Bay Area in 1975 and have been either working or recreating on the
13 waters of the Bay that whole time.

14 6. In addition to operating Baykeeper’s vessel, I own my own sailboat. I sail up and down the
15 Oakland Estuary past the Oakland Army Base on a regular basis.

16 7. I live in Alameda, California, in close proximity – just across the Oakland Estuary – from the
17 Port of Oakland. I have lived in my current residence on the Oakland Estuary since May of 1989,
18 except for the last five or six summers, which I have spent in Maine. My residence and the harbor
19 where I keep my boat, Marina Village, are near the former Oakland Army Base where Plaintiff
20 proposes to build and operate a bulk export terminal that exports and handles coal and petroleum
21 coke.

22 8. I use these area waterways and adjoining lands to sail and boat, both recreationally and at
23 times as a professional delivery skipper. I have sailed extensively on the Bay and have continuously
24 owned a boat on the Bay since 1975 when I first moved here.

25 9. I have sailed every part of the Bay. My usual circuit in recent years is to sail the Oakland
26 Estuary north and proceed up to Angel Island, then to Sausalito, sailing the entire heart of the Bay
27 and occasionally going to other cities around the Bay before returning to Alameda.

1 10. As a professional delivery skipper, I delivered yachts for others up and down the California
2 coast as well as on the East Coast.

3 11. I am a United States Coast Guard licensed captain, 50 ton Master with sail and towing
4 endorsements. I am also a Federal Aviation Administration licensed private pilot with a tailwheel
5 endorsement. These licenses are current and up to date.

6 12. I obtained a Bachelor of Arts with distinction from the University of Michigan in 1970 and
7 completed the Executive Program at the Stanford Graduate School of Business from 1989-1990.

8 13. I was Harbormaster for the town of Castine, Maine, from 2007-2009. Because Maine
9 harbormasters are law enforcement officers with jurisdiction over Maine state waters, I have a
10 professional understanding of the management of waterways and the application of state and federal
11 law.

12 14. I believe that the City of Oakland's coal ordinance protects me and my property from adverse
13 impacts that would occur were the Port of Oakland to be used as a coal terminal.

14 15. Harms that concern me personally from the proposed coal terminal include air and water
15 pollution from coal transport, handling, and storage; and climate change disruption caused by the
16 release of greenhouse gases from coal burning overseas. I am particularly concerned about being
17 downwind from the proposed coal terminal and the damage that coal dust would do to my home,
18 boat, and the Bay ecosystem that I love.

19 16. I support the Oakland City Council's ordinance and resolution that prohibits the handling or
20 storage of coal or petroleum coke at bulk material facilities in Oakland.

21 17. I recreate via boat in the vicinity of the proposed coal terminal and my use and enjoyment of
22 the recreational opportunities provided by the Bay will be harmed if the terminal is built and
23 operated as proposed.

24 18. I have specific aesthetic concerns that will be harmed if the terminal is built and operated as
25 proposed. I often recreate via boat on the Bay, including the area near the proposed coal terminal,
26 and I enjoy the beauty and wildlife that it has to offer. I believe this beauty and wildlife will be
27 harmed if Oakland's ordinance is overturned.

1 19. I enjoy wildlife in the land and water near the proposed coal terminal and my interest in that
2 enjoyment will be harmed if the terminal is built and operated as proposed.

3
4 I declare under penalty of perjury pursuant to the laws of the United States and the State of
5 California that the forgoing is true and correct.

6
7 Executed this 13th day of February, 2017 at Oakland, California.

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10 

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12 Raymond Durkee

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OAKLAND BULK & OVERSIZED TERMINAL,
LLC,

Case No. 16-cv-7014-VC

Plaintiff,

v.

CITY OF OAKLAND,

Defendant,

and

SIERRA CLUB and SAN FRANCISCO
BAYKEEPER,

Proposed Defendant-Intervenors.

**DECLARATION OF BRITTANY KING
IN SUPPORT OF PROPOSED
INTERVENORS' MOTION TO
INTERVENE**

Hearing: Apr. 20, 2017
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Place: Courtroom 4, 17th Floor

Action Filed: Dec. 7, 2016

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4 *Attorney for Proposed Defendant-Intervenor*
Sierra Club

1 My name is Brittany King. I am of legal age and competent to give this declaration. All information
2 contained herein is based on my personal knowledge. I give this declaration for use by the Sierra
3 Club in its motion to intervene.

4 1. I am a Sierra Club staff member for the San Francisco Bay Chapter, the local branch of the
5 Sierra Club, which covers work in Alameda, Contra Costa, Marin and San Francisco counties. As a
6 Conservation Manager, my work for the Bay Chapter entails attending frequent meetings and events
7 in Oakland. The Bay Chapter's work in Oakland has encompassed everything from supporting
8 cleaner trucks at the Port of Oakland to combat air pollution, to planting trees, to supporting jobs and
9 clean energy. I am also a member of the Sierra Club and have been since 2015.

10 2. Sierra Club is a non-profit corporation headquartered in California and founded in 1892, with
11 nearly 700,000 members nationwide and over 150,000 members in California, including members
12 who reside or recreate in Oakland. The Sierra Club is dedicated to exploring, enjoying, and
13 protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's
14 resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of
15 the natural and human environment; and to using all lawful means to carry out these objectives. The
16 Sierra Club's concerns encompass a variety of environmental issues in California and beyond,
17 including an interest in protecting California communities, air and waterways, and the broader
18 environment.

19 3. I understand that the Sierra Club and San Francisco Baykeeper are seeking to intervene in a
20 lawsuit that Oakland Bulk & Oversized Terminal, LLC filed against the City of Oakland.

21 4. Sierra Club takes an interest in protecting the air and water of Oakland. Sierra Club members
22 live near and recreate in and near Oakland's waterways, including the San Francisco Bay, and in
23 West Oakland near the proposed coal terminal site. Sierra Club has also long taken an interest in
24 coal and petroleum coke ("petcoke") nationally and in California in particular because of their
25 negative health, safety, and climate impacts. The Sierra Club submitted numerous public records
26 requests in Oakland and elsewhere to help uncover the information that coal would be part of the
27 Oakland Bulk Terminal. The Sierra Club worked to bring to light this information—that the
28 developer intended to keep private—by informing the City Council and the broader public. Sierra

1 Club participated in the public health and safety hearings pertaining to coal and petcoke in Oakland,
2 submitting written and oral testimony. I personally organized for and attended the June 27, 2016
3 City Council hearing and first vote on the Ordinance and Resolution. I also organized for and
4 testified at the second hearing and vote on the Ordinance on July 19, 2016.

5 5. I am personally and professionally concerned about protecting air and water quality, and the
6 health of Oakland residents. I spent much of my childhood as an Oakland resident and most of my
7 family lives in Oakland. I consider myself part of the Oakland community since I attend church in
8 Oakland on a weekly basis, visit family on a regular basis, and am on the board of Oakland
9 Community Organizations, a faith-based community group that organizes to prevent violence. For
10 my job, I am regularly in Oakland and in West Oakland, on average about once per week, to attend
11 meetings or to participate in other activities. I have also recreated at the Middle Harbor Shoreline
12 Park, which is near the proposed coal terminal site. I intend to return to West Oakland as part of my
13 personal and professional activities.

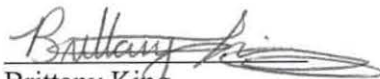
14 6. My concern also stems from my personal activities. I have a background in marine science so
15 I am especially concerned about the water and what might happen if a coal terminal were built. I also
16 enjoy kayaking on the San Francisco Bay near Oakland so I am concerned that large coal ships and
17 ship traffic could pose a threat to my recreational interests, and to wildlife like whales. I am also
18 concerned about the air we breathe since I have family members and many friends who suffer from
19 asthma. I live in Richmond and can see the negative impacts from even a relatively small coal
20 terminal. Seeing coal harms my aesthetic perceptions of the Bay, and makes me concerned about air
21 and water quality because coal is very dusty. If the Oakland ordinance did not exist and a coal
22 terminal were built in West Oakland, I am concerned there would be an increase in air
23 contamination, especially particulate matter, in an environmental justice area where residents are
24 already overburdened by pollution. I am worried a coal terminal could have a negative health impact
25 on me, my family, and other Oakland residents.

26 7. If the City of Oakland's ordinance and resolution were overturned as Oakland Bulk &
27 Oversized Terminal, LLC requests, it seems likely that a coal terminal would be built, which would
28 cause negative environmental, aesthetic, recreational and economic consequences to me and to the

1 Sierra Club. If a court upholds the Ordinance and Resolution, my interests and those of the Sierra
2 Club, which fought hard to support these pieces of legislation, would be protected.

3
4 I declare under penalty of perjury pursuant to the laws of the United States and the State of
5 California that the foregoing is true and correct.

6
7 Executed this 14 day of February 2017 in Berkeley, California.

8
9 
10 Brittany King

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OAKLAND BULK & OVERSIZED TERMINAL,
LLC,

Case No. 16-cv-7014-VC

Plaintiff,

v.

CITY OF OAKLAND,

Defendant,

and

SIERRA CLUB and SAN FRANCISCO
BAYKEEPER,

Proposed Defendant-Intervenors.

**DECLARATION OF KENT
LEWANDOWSKI IN SUPPORT OF
PROPOSED INTERVENORS'
MOTION TO INTERVENE**

Hearing: Apr. 20, 2017
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Place: Courtroom 4, 17th Floor

Action Filed: Dec. 7, 2016

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4 *Attorney for Proposed Defendant-Intervenor*
Sierra Club

1
2 1. My name is Kent Lewandowski. I am of legal age and competent to give this declaration. All
3 information contained herein is based on my personal knowledge. I give this declaration for use by
4 the Sierra Club in its motion to intervene.

5 2. I have been an Oakland resident since 2005 and live approximately 4 miles from the area
6 where the Oakland Bulk and Oversize Terminal is proposed near the Port of Oakland.

7 3. I am a current member of the Sierra Club San Francisco Bay Chapter, the local branch of the
8 Sierra Club, and have been since approximately 2006. I previously served as the volunteer Chair of
9 the Northern Alameda County Group of the Sierra Club, a position that I held for 6 years. I have also
10 participated as part of the political endorsements committee.

11 4. I took part in the Bay Chapter's campaign to support cleaner air at the Port of Oakland in the
12 2008-2009 timeframe. As a result of these efforts we were able to secure commitments from the Port
13 of Oakland to improve air quality.

14 5. I read numerous articles about the proposed coal terminal in the newspapers. The secret coal
15 terminal issue arose after my tenure as the Northern Alameda County Group Chair. I attended at
16 least one City Council meeting in approximately July 2015 because Sierra Club and other
17 community activists wanted to bring the Oakland City Council's attention to the coal issue. I also
18 attended one meeting with Councilmember Rebecca Kaplan along with other Sierra Club volunteers
19 to express concern and voice our opposition to the proposed terminal.

20 6. I am especially concerned that building a coal and petroleum coke terminal in West Oakland
21 would make air quality worse, and undo all of that my volunteer work where we were able to secure
22 commitments from the Port of Oakland to improve air quality. I am specifically concerned that
23 particulate matter pollution will worsen if coal or petcoke is handled in Oakland.

24 7. My concern also stems from my recreational activities. I enjoy sailing and fishing on the Bay
25 with friends. These activities take me to West Oakland about every other month or so. I am
26 concerned that building a coal or petcoke terminal will increase ship traffic and pollution, which
27 would diminish my enjoyment of sailing and fishing.
28

1 8. I understand that the Sierra Club and other parties are seeking to intervene in a lawsuit that
2 Oakland Bulk and Oversized Terminal LLC filed against the City of Oakland.

3 9. If the City of Oakland's ordinance and resolution were overturned as Oakland Bulk &
4 Oversized Terminal, LLC requests in its lawsuit, it seems likely that coal and petcoke would be
5 handled in Oakland, which would cause negative environmental, aesthetic, recreational, and
6 economic consequences to me and to the Sierra Club. If a court upholds the ordinance and
7 resolution, my interests and those of the Sierra Club, which fought hard to support these pieces of
8 legislation, would be protected.

9
10 I declare under penalty of perjury pursuant to the laws of the United States and the State of
11 California that the foregoing is true and correct.

12
13 Executed this 15th day of February 2017 in Oakland, California.

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17 Kent Lewandowski
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Sierra Club*

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OAKLAND BULK & OVERSIZED TERMINAL,
LLC,

Case No. 16-cv-7014-VC

Plaintiff,

v.

CITY OF OAKLAND,

Defendant,

and

SIERRA CLUB and SAN FRANCISCO
BAYKEEPER,

Proposed Defendant-Intervenors.

**DECLARATION OF JESSICA YARNALL
LOARIE IN SUPPORT OF PROPOSED
INTERVENORS' MOTION TO
INTERVENE**

Hearing: Apr. 20, 2017

Time: 10:00 a.m.

Judge: Hon. Vince Chhabria

Place: Courtroom 4, 17th Floor

Action Filed: Dec. 7, 2016

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4 *Attorney for Proposed Defendant-Intervenor*
Sierra Club

1 I, **Jessica Yarnall Loarie**, do hereby declare as follows:

2 1. I have personal knowledge of the facts stated in this declaration, unless stated on information
3 and belief, and if called to testify as a witness, I could and would testify competently to the truth of
4 these facts.

5 2. I am the attorney of record for Proposed Defendant-Intervenor Sierra Club in the above
6 captioned case.

7 3. Attached as **Exhibit 1** is a true and correct copy of the public comment letter regarding the
8 Oakland public health and safety hearing on coal and petcoke, excluding attachments to the letter,
9 submitted to the Oakland City Administrator on behalf of Sierra Club, San Francisco Baykeeper, and
10 other groups, dated September 2, 2015.

11 4. Attached as **Exhibit 2** is a true and correct copy of the public comment letter regarding the
12 Oakland public health and safety hearing on coal and petcoke, excluding attachments to the letter,
13 submitted to the Oakland City Administrator on behalf of Sierra Club, San Francisco Baykeeper, and
14 other groups, dated September 14, 2015.

15 5. Attached as **Exhibit 3** is a true and correct copy of the public comment letter regarding the
16 Oakland public health and safety hearing on coal and petcoke, excluding attachments to the letter,
17 submitted to the Oakland City Council on behalf of Sierra Club, San Francisco Baykeeper, and other
18 groups, dated September 21, 2015.

19 6. Attached as **Exhibit 4** is a true and correct copy of the public comment letter regarding the
20 Oakland public health and safety hearing on coal and petcoke, excluding attachments to the letter,
21 submitted to the Oakland City Council on behalf of Sierra Club, San Francisco Baykeeper, and other
22 groups, dated October 6, 2015.

23 7. Attached as **Exhibit 5** is a true and correct copy of the public comment letter regarding an
24 ordinance to prohibit the storage and handling of coal and coke at bulk materials facilities or
25 terminals in Oakland, excluding attachments to the letter, submitted to the Oakland City Council and
26 Oakland Department of Planning & Building on behalf of Sierra Club, San Francisco Baykeeper,
27 and other groups, dated June 27, 2016.

8. Attached as **Exhibit 6** is a true and correct copy of the public comment letter regarding an ordinance prohibiting the storage and handling of coal and coke at bulk material facilities or terminals in Oakland, submitted to the Oakland City Council on behalf of Sierra Club, San Francisco Baykeeper, and other groups, dated July 19, 2016.

9. Attached as **Exhibit 7** is a true and correct copy of Verified Petition for Writ of Mandate under the California Environmental Quality Act, filed October 2, 2015, in *Communities for a Better Environment v. City of Oakland*, No. RG15788084 (Cal. Super. Ct., filed Oct. 2, 2015).

10. Attached as **Exhibit 8** is a true and correct copy of Respondent City of Oakland's Memorandum of Points and Authorities in Support of Demurrer to Verified Petition for Writ of Mandate, filed November 9, 2015, in *Communities for a Better Environment v. City of Oakland*, No. RG15788084 (Cal. Super. Ct., filed Oct. 2, 2015).

11. Attached as **Exhibit 9** is a true and correct copy of Joint Stipulation Regarding Voluntary Dismissal of Action, filed December 1, 2015, in *Communities for a Better Environment v. City of Oakland*, No. RG15788084 (Cal. Super. Ct., filed Oct. 2, 2015).

I declare under penalty of perjury pursuant to the laws of the United States and the State of California that the forgoing is true and correct.

Executed this 14th day of February, 2017 at Oakland, California.

Jessica Yarnall Loarie

EXHIBIT 7

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ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By *Jayana Turner* Deputy

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA

13 COMMUNITIES FOR A BETTER
14 ENVIRONMENT, SIERRA CLUB, SAN
15 FRANCISCO BAYKEEPER, and ASIAN
16 PACIFIC ENVIRONMENTAL NETWORK,

17 Petitioners,

18 v.

19 CITY OF OAKLAND, and DOES 1 through
20 100, inclusive,

21 Respondents.

22 PROLOGIS CCIG OAKLAND GLOBAL, LLC;
23 TERMINAL LOGISTICS SOLUTIONS;
24 OAKLAND BULK AND OVERSIZED
25 TERMINAL, LLC and DOES 101 through 199,
26 inclusive,

27 Real Parties In Interest.
28

RG15 788084

VERIFIED PETITION FOR WRIT OF
MANDATE UNDER THE
CALIFORNIA ENVIRONMENTAL
QUALITY ACT

INTRODUCTION

1
2 1. Once a thriving industrial and military town, the City of Oakland (“City”) is emerging
3 from the nationwide recession with renewed economic vigor. In recent years, Oakland has become a
4 magnet for forward-looking enterprises like young technology companies and renewable energy
5 businesses. Long known for its progressive politics, the City has made various commitments to
6 fighting climate change by reducing the greenhouse gas emissions generated by the City. Most
7 recently, in 2014, the City Council passed a resolution to “Oppose Transportation of Hazardous
8 Fossil Fuel Materials” through the City, including coal.

9 2. One development project – the former Oakland Army Base, located where the Bay
10 Bridge touches down in Oakland – has recently become a flash point for testing the City’s
11 commitments to both economic development and its environmental policies, due to the recent
12 revelation that the project developers plan to establish a coal export terminal at the site.

13 3. The U.S. Army turned over its former base to local redevelopment agencies in 1999.
14 Given the base’s proximity to key highways and rail and marine transportation corridors, early
15 planning documents for the project envisioned that the Army Base redevelopment would enhance
16 the freight transportation infrastructure along the Oakland waterfront, while balancing economic
17 development with public benefits, such as remediating contamination at the site, creating sustainable
18 jobs and affordable housing, and preserving environmental resources.

19 4. Part of the redevelopment involves the renovation of an existing marine terminal, the
20 Oakland Bulk and Oversize Terminal, located at the foot of the San Francisco Bay Bridge. In 2012,
21 the City contracted with Prologis CCIG Oakland Global, LLC to handle development of several
22 areas of the base, including an existing marine terminal. Redevelopment project documents stated
23 that the renovation would allow the terminal to export bulk goods like iron ore and corn, and import
24 oversized goods like windmills and large mechanical parts. Coal was never discussed as a potential
25 commodity that would be shipped through the terminal, and none of the environmental review for
26 the Army Base redevelopment project has evaluated the environmental and health effects of coal
27 transportation. Indeed, the developers assured the public on multiple occasions, including in face-to-
28 face meetings, that coal would not be shipped through the terminal.

1 5. Years after environmental review for the Army Base development concluded, on or
2 after April 7, 2015, community members, including Petitioners Communities for a Better
3 Environment, Sierra Club, San Francisco Baykeeper, and Asian Pacific Environmental Network
4 (“Petitioners”) learned for the first time that the terminal would be converted into a coal export
5 terminal capable of shipping up to ten million tons of coal per year. This capacity would make the
6 terminal the largest coal terminal in California and the U.S. West Coast.

7 6. Community members learned through a news article that the project developer had
8 cut a secret funding deal with four Utah counties which would bring coal into Oakland. In exchange
9 for \$53 million in project funding, the developer promised Utah shipping rights to 49 percent of the
10 terminal’s nine to ten million ton capacity. Utah officials have stated that they intend to use this
11 capacity to export coal to overseas markets.

12 7. Coal transportation has serious impacts on local air and environmental quality, and
13 creates numerous safety risks for workers and communities along the rail lines. Allowing coal
14 combustion overseas fosters climate change, which has both global and local effects. The
15 environmental review for the Army Base did not study any of these effects of transporting coal
16 through Oakland. Further, since these effects have never been studied as part of the environmental
17 review for the redevelopment, there are no enforceable mitigation measures in place to protect the
18 community from the many harmful effects of coal transportation, and there has been no study of
19 potential alternatives to a coal export project.

20 8. The California Environmental Quality Act (“CEQA”) requires the City to conduct
21 additional environmental review on the effects of the proposed coal export terminal, since it
22 represents a substantial change in the nature of the redevelopment project, and community members
23 and City officials only recently learned of this change.

24 9. Petitioners support the continued revitalization of the City of Oakland, including the
25 larger Oakland Army Base redevelopment, and the numerous benefits that such development will
26 bring. Nevertheless, the City’s legal duties under CEQA require it to conduct further environmental
27 review of the proposed coal export terminal. Petitioners bring this lawsuit to compel the additional
28 environmental review required by law.

PARTIES

10. Petitioner COMMUNITIES FOR A BETTER ENVIRONMENT (“CBE”) is a California non-profit environmental health and environmental justice organization with offices in Oakland and Huntington Park. CBE is dedicated to protecting the environment and public health by reducing air, water, and toxics pollution and equipping residents of California’s urban areas with the tools to monitor and transform their immediate environment. CBE has thousands of members in California, many of whom live, work, and recreate near the former Army Base. CBE and its members have worked to reduce the environmental and health risks in Oakland for many years and will be affected by the development of a coal terminal on the Oakland waterfront.

11. Petitioner SIERRA CLUB is a national nonprofit organization of nearly 650,000 members, including over 148,000 members in California. Sierra Club has members residing in Oakland who live, work, and recreate near the former Army Base, and who have an interest in ensuring that their community remains a safe and healthy place. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to promoting the responsible use of the earth’s ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club’s particular interest in this case stems from the organization’s commitment to stopping the many environmental and human health impacts associated with mining, transporting, and burning coal and other fossil fuels, and ensuring that the City of Oakland conducts environmental review of coal transportation through Oakland.

12. Petitioner SAN FRANCISCO BAYKEEPER (“BAYKEEPER”) is a regional non-profit organization with over 3,000 members who reside in the San Francisco Bay Area, the vast majority of whom have longstanding and ongoing personal interests in the mission of the organization, because they live, work, and recreate in or around the San Francisco Bay. Baykeeper’s mission is to protect and enhance the water quality of the San Francisco Bay-Delta estuary and its watershed for the benefit of its ecosystems and communities. As part of this goal, Baykeeper works to ensure that state and federal environmental laws are properly implemented and enforced. Baykeeper’s particular interest in this case stems from the organization’s commitment to protecting

1 local communities and the local environment, and to ensuring that the City of Oakland complies with
2 its environmental duties.

3 13. Petitioner ASIAN PACIFIC ENVIRONMENTAL NETWORK (“APEN”) is a non-
4 profit organization incorporated in California that works to create a world where all people have a
5 right to a clean and healthy environment. With offices in Richmond and Oakland, APEN organizes
6 and develops the leadership of low-income Asian immigrants and refugees to achieve environmental
7 and social justice. It has a membership base of over 350 families in the Bay Area, and many
8 members in Oakland, California. APEN’s members have an interest in their health and well-being,
9 as well as conservation, environmental, aesthetic, and economic pursuits in Oakland and the greater
10 Bay Area. APEN’s members who live and work in or near the proposed terminal have a beneficial
11 interest in the City of Oakland’s compliance with CEQA. These interests have been, and continue to
12 be, threatened by the City of Oakland’s failure to conduct environmental review for a coal terminal
13 on the Oakland waterfront.

14 14. By this action, Petitioners seek to protect the health, welfare, and economic interests
15 of their members and the general public and to enforce the City of Oakland’s duties under CEQA.
16 Petitioners’ members and staff have an interest in their personal health and well-being, as well as in
17 ensuring their continued enjoyment of environmental, aesthetic, and economic activities in and
18 around the proposed terminal site. Petitioners’ members and staff who live and work in or near
19 Oakland, California have a right to and a beneficial interest in the City of Oakland’s compliance
20 with CEQA. These interests have been, and continue to be, threatened by the City of Oakland’s
21 failure to comply with CEQA. Unless the relief requested in this case is granted, Petitioners’
22 members and staff will continue to be adversely affected and irreparably injured by the City of
23 Oakland’s failure to comply with CEQA.

24 15. Respondent CITY OF OAKLAND (“CITY”) is located in Alameda County, and is
25 home to over 400,000 people. Under CEQA, the City serves as the lead agency responsible for
26 environmental review of the Oakland Army Base redevelopment project and the Oakland Bulk and
27 Oversize Terminal project.

28 16. Real Party in Interest PROLOGIS CCIG OAKLAND GLOBAL, LLC (“PROLOGIS

CCIG”), a Delaware corporation registered to do business in California, has entered into development agreements with the City for the purposes of developing the former Oakland Army Base and the Oakland Bulk and Oversize Terminal. On information and belief, Prologis CCIG is a joint venture between California Capital Investment Group (“CCIG”), a full service commercial real estate company, and Prologis, a company handling freight logistics and distribution.

17. Real Party in Interest TERMINAL LOGISTICS SOLUTIONS (“TLS”) is a California corporation. On information and belief, TLS has an option agreement with CCIG to develop the Oakland Bulk and Oversize Terminal, and to provide stevedoring services at the terminal.

18. Real Party in Interest OAKLAND BULK AND OVERSIZED TERMINAL LLC (“OBOT LLC”) is a California corporation. On information and belief, OBOT shares responsibilities with Prologis CCIG and TLS in the development of the terminal.

19. The true names and capacities, whether individual, corporate, or otherwise, of DOES 1 through 199 are unknown to Petitioners. Petitioners allege that each of said Does is either a Respondent, or a Real Party in Interest, and they will amend this Petition to set forth the true names and capacities of said Doe parties when they have been ascertained.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to Code of Civil Procedure section 1085, or, in the alternative, section 1094.5; and pursuant to Public Resources Code section 21168.5, or, in the alternative, section 21168.

21. Venue is proper in this court pursuant to Code of Civil Procedure sections 393(b), 394, and 395 because the Respondent City of Oakland is located in Alameda County, the Oakland Army Base redevelopment project and Oakland Bulk and Oversize Terminal are located in Alameda County, and many of the harmful impacts of the recent developments relating to those projects will occur in this County.

22. This action was timely filed within 180 days of the time that Petitioners first learned, or could have learned, that the Oakland Bulk and Oversized Terminal would be developed for use as a coal export terminal.

23. Petitioners have provided written notice of their intention to file this Petition to the City of Oakland, pursuant to the requirements of Public Resources Code section 21167.5. The notice and proof of service are hereby attached as Exhibit A.

24. Petitioners have served the Attorney General with a copy of their Petition along with a notice of its filing, in compliance with Public Resources Code section 21167.7. The notice and proof of service are hereby attached as Exhibit B.

25. Petitioners do not have a plain, speedy, or adequate remedy at law because Petitioners and their members will be irreparably harmed by the environmental damage caused by the development of a coal export terminal at the Oakland Bulk and Oversize Terminal and the City's violations of CEQA.

STATEMENT OF FACTS

The Community and Environmental Setting

26. The neighborhood of West Oakland surrounds the redevelopment area and site of the proposed coal export terminal. The neighborhood already suffers from impaired air quality and poor health outcomes due to Port of Oakland operations and other industrial activities in the area.

27. The community adjacent to the former Army Base is predominantly African American and Latino. Once an economically thriving community, the neighborhood has been hit hard over the decades by the decline of railroad, shipbuilding, and other manufacturing and industrial jobs in the area. Now, 79 percent of area residents live below the state poverty threshold of \$43,876 per year for a family of four, and 85 percent of area residents have less than a high school diploma.

28. According to the California Environmental Protection Agency, the community adjacent to the redevelopment area is already severely burdened by diesel pollution and hazardous waste exposure. In a recent risk assessment for the area, the California Air Resources Board found that residents of West Oakland are exposed to three times the amount of diesel particulate matter compared to residents of surrounding areas.

29. The health outcomes for West Oakland residents are already grim. Residents suffer from extremely high rates of asthma and other respiratory ailments, and children and the elderly are

1 especially susceptible to these ailments. When compared to the outcomes for residents in the hillside
2 neighborhoods of Oakland, residents living near the redevelopment area are more likely to give birth
3 to premature or low birth weight children, and to suffer from diabetes, heart disease, stroke, and
4 cancer. Individuals born in West Oakland can expect to die 15 years earlier than individuals born in
5 the Oakland Hills.

6 30. Transporting coal to Oakland by rail, storing the coal in the community, and shipping
7 coal on diesel-fueled tankers will all have immediate and long-term health impacts. These activities
8 will only add to the already significant health burdens of the community and create unacceptable
9 risks to the community.

10 **The Oakland Army Base Redevelopment**

11 31. The Oakland Army Base redevelopment area occupies some 1,800 acres on the
12 Oakland waterfront in West Oakland. Following the Army Base's closure in 1999, the U.S. Army
13 transferred the land to a local redevelopment agency, the Oakland Base Reuse Authority ("OBRA")
14 to administer the redevelopment of the base. In or around 2006, the City acquired part of the
15 redevelopment agency's interest in the Army Base, including its interest in the Gateway
16 Development area.

17 32. The former base is located at the intersection of a number of key transportation
18 corridors. It is adjacent to the Port of Oakland, one of the nation's busiest maritime shipping ports.
19 The base is also adjacent to rail lines and interstate highways 80, 580 and 880, which provide easy
20 access routes for goods transiting through the Port.

21 33. Early project documents describing redevelopment plans for the area, such as the
22 2002 environmental impact report for the redevelopment project, showed that the City and
23 developers aimed to leverage proximity to these corridors to provide additional transportation and
24 logistics infrastructure for freight shipping, as well as to provide additional space for various
25 commercial, industrial, residential and retail enterprises. Redevelopment plans also were intended to
26 ensure that the surrounding community benefitted from the redevelopment through the creation of
27 sustainable jobs and job training programs, the enhancement of transportation infrastructure, the
28 protection and preservation of environmental resources, and the development of affordable housing.

1 34. In 2012, the City of Oakland entered into a Lease Disposition and Development
2 Agreement (“LDDA”) with Prologis CCIG Oakland Global, LLC, a joint venture consisting of
3 Prologis and CCIG, to lease portions of the Army Base redevelopment area to Prologis CCIG to
4 carry forward the development plans. In 2013, the City entered into a Development Agreement with
5 Prologis CCIG to set forth additional rights and obligations of the City and developers with respect
6 to the Army Base redevelopment.

7 35. The Army Base redevelopment area includes several sub-districts: (a) the Oakland
8 Army Base sub-district, consisting of 470 acres along the Oakland waterfront and adjacent to the
9 Bay Bridge, including the Gateway redevelopment area and the Port development area; (b) the
10 Maritime sub-district, of some 1,290 acres, including existing marine and rail terminals at the Port of
11 Oakland; and (c) the 16th/Wood sub-district, consisting of 41 acres located between Wood Street
12 and Interstate 880, and between 26th and 9th streets, and including rail and industrial sites.

13 36. On information and belief, Prologis CCIG entered into agreements with TLS and
14 OBOT LLC to develop the marine terminal located at Berth 7 in the Gateway redevelopment sub-
15 district. (Prologis CCIG, TLS and OBOT LLC are collectively referenced as “the developers”).

16 37. None of the CEQA documents prepared by the City of Oakland for the
17 redevelopment project, including the 2002 environmental impact report (“EIR”) and 2012 Initial
18 Study/Addendum (“Initial Study”), mention the possibility of coal transportation through any part of
19 the redevelopment project.

20 38. According to the 2002 EIR, redevelopment in the Gateway Redevelopment Area was
21 intended to include “light industrial, research and development (R&D), and flex-office space uses,
22 with business-serving retail space.” Development would also include “some warehousing and
23 distribution facilities and ancillary maritime support facilities,” and commitments to public benefits,
24 such as a park, job training and homeless assistance programs. The 2002 EIR does not mention the
25 possibility of coal transportation through the development.

26 39. The 2012 Initial Study describes the work in the Gateway Redevelopment Area as
27 including development of a new Trade and Logistics Center, known as the Oakland Global Trade
28 and Logistics Center. One of the projects planned for the trade and logistics center was enhancing

1 the cargo-handling and storage capacity of an existing marine terminal, located at Berth 7, in the
2 West Gateway portion of the sub-area, so that it could serve as a break bulk terminal.

3 40. The terminal, also called the Oakland Bulk and Oversized Terminal in the Initial
4 Study, was designed to transport cargo between railroad and ships. Its “[e]xport cargo would consist
5 of non-containerized bulk goods, and inbound cargo would consist primarily of oversized or
6 overweight cargo unable to be handled on trucks, and thus transferred directly from ships to rail.”
7 The Initial Study does not mention, consider, or study the possibility that coal might be shipped out
8 of the terminal.

9 41. There is no mention of coal in any of the other documents formalizing the
10 relationship between the developers and the City or setting up the funding structure for the
11 redevelopment. The LDDA between the City of Oakland and the developer states that the bulk
12 terminal will serve as “[a] ship-to-rail terminal designed for the export of non-containerized bulk
13 goods and import of oversized or overweight cargo.” The Development Agreement states the same.
14 The City and Port’s funding application for federal “TIGER III” funds states that “Berth 7 would be
15 converted to a modern break-bulk terminal for movement of commodities such as iron ore, corn and
16 other products brought into the terminal by rail. The terminal would also accommodate project
17 cargo such as windmills, steel coils and oversized goods.” The potential for coal transportation is
18 not mentioned. Likewise the City’s application to the California Transportation Commission for
19 Proposition 1B Trade Corridor Improvement Funds –intended to “improve trade corridor mobility
20 while reducing emissions of diesel particulate and other pollutant emissions” – makes no mention of
21 the terminal being used for the transportation of coal.

22 42. Local officials who were at the negotiating table while the redevelopment plans were
23 being formalized confirm that coal transportation was never discussed as an aspect of the
24 redevelopment program. Former Oakland Mayor Jean Quan stated that coal was never discussed as
25 one of the commodities that could be transported, and that the developer affirmatively “made open
26 and public promises to us” that coal would not be part of the project. During a September 21, 2015
27 public hearing on the health and safety implications of coal transportation, Mayor Quan also stated:
28

1 “[t]he approval process would have been very, very different if Phil Tagami would have said, ‘We’re
2 going to do coal.’”

3 43. Phil Tagami, the President and Chief Executive Officer of CCIG, has been closely
4 involved with the redevelopment process, and prior to 2015, made several public statements that coal
5 transportation would not be a part of the redevelopment. In a December 2013 Oakland Global
6 newsletter published by the developers, Phil Tagami expressly stated that “CCIG is publicly on
7 record as having no interest or involvement in the pursuit of coal-related operations at the former
8 Oakland Army Base.”

9 **New Information Surfaces Regarding Coal Transportation At the Army Base**

10 44. On or after April 7, 2015, Oakland community members, including Petitioners,
11 learned for the first time that the bulk terminal located at the foot of the Bay Bridge would be
12 dedicated to shipping Utah coal.

13 45. According to an April 7, 2015 article in the Richfield Reaper, a local Utah newspaper,
14 the Utah Permanent Community Impact Fund Board had approved a \$53 million loan to four Utah
15 counties – the coal-producing counties of Sevier, Sanpete, Carbon, and Emery – to allow them to
16 purchase an interest in the Oakland bulk terminal. According to Malcolm Nash, the economic
17 development director of Sevier County, this shipping capacity would be used to “find[] a new home
18 for Utah’s products – and in our neighborhood, that means coal.”

19 46. In exchange for providing the bulk terminal’s developer with \$53 million in project
20 funds, the Utah counties would have the guaranteed right to use at least 49 percent of the bulk
21 terminal’s capacity of approximately 9 million metric tons per year. Nash noted that the Utah coal
22 companies are interested in using that capacity to ship coal to overseas markets, given that “there is a
23 cliff” in domestic coal markets.

24 **Past Representations By the Developers That the Army Base Would Not Be Used to Ship Coal**

25 47. Community members, including Petitioners, and Oakland city officials were surprised
26 and outraged by the breaking news that the former Army Base development would suddenly be used
27 to ship coal. Prior to 2015, community members received multiple reassurances from City officials
28 and the developer that the Army Base redevelopment would not be used for coal transportation.

1 48. As part of its regular tracking of developments at West Coast ports, the Sierra Club
2 sent a Public Records Act (“PRA”) request to the City on February 20, 2013, inquiring about
3 whether the City had any information about potential coal projects. On February 25, 2013, the City
4 responded that it “has no record of any proposal, communications, or notes from meetings that relate
5 to the export, storage, or use of coal in the [Oakland Army Base redevelopment]. Nor have we
6 received any applications for coal export terminals or multicommodity terminals that include coal
7 exports at the [Army Base].” The City further noted that in discussions with the Port to prepare the
8 CEQA analysis for the redevelopment, the Port had no information on coal projects, and the City
9 concluded: “to our knowledge that commodity is not part of the Army Base project.”

10 49. Sierra Club also sent a PRA request to the Port of Oakland on February 20, 2013.
11 Some of the documents produced by the Port indicated that CCIG was considering bringing coal
12 through the Army Base redevelopment. Port officials expressed skepticism about the viability of a
13 coal project at the redevelopment, given state policies against coal exports and the likelihood of local
14 political opposition. One Port officer noted that coal “may not be the right target commodity for
15 Oakland due to dust and global warming issues.”

16 50. To follow-up on the information learned through the PRA, local groups include the
17 Sierra Club, San Francisco Baykeeper, Communities for a Better Environment and Earthjustice
18 scheduled a meeting with CCIG and Phil Tagami on or around January 23, 2014 to discuss whether
19 coal would be shipped through the Army Base redevelopment. During the meeting, Tagami
20 reassured community members that coal would not be a part of the Army Base redevelopment. He
21 stated that he did not want to ship coal, and instead was focused on commodities like iron ore,
22 copper concentrate, potash and distilled grain. He also stated that he was willing to explore avenues
23 for preventing coal exports from coming through the redevelopment, such as statewide legislation
24 banning coal transportation in the state or a further agreement with the developers promising not to
25 ship coal through the development. Community members were unable to schedule a follow up
26 meeting to discuss these alternative avenues.

27 51. On or around January 24, 2014, Phil Tagami posted on Facebook that: “[i]n addition
28 to a number of other measures The Oakland Bulk and Oversized Terminal (OBOT) a CCIG

1 controlled company, is saying NO to coal as a export product. We are committed to emission
 2 reductions here and abroad. We share this one planet and the only path to clean the air is to at some
 3 point stop polluting it.”

4 52. After learning about the Utah funding to ship coal through the Army Base in April
 5 2015, Petitioners sent public records requests to the City, Port and to the Utah counties in an attempt
 6 to learn more about the plans to ship coal through the redevelopment.

7 53. As Petitioners later learned through public records requests sent to the Utah
 8 Community Impact Board and Utah counties, Utah officials had hoped to keep news of the coal
 9 funding deal secret. In an April 8, 2015 email, Jeff Holt, the chairman of the Utah Transportation
 10 Commission and advisor to the four Utah counties wrote county representatives, stating: “We’ve had
 11 an unfortunate article appear on the terminal project . . . If anything needs to be said, the script was
 12 to downplay coal and discuss bulk products and a bulk terminal. The terminal operator is TLS, not
 13 Bowie. Bowie is known for coal . . . Phil Tagami had been pleased at the low profile that was
 14 bumping along to date on the terminal and it looked for a few days like it would just roll into
 15 production with no serious discussion.”

16 54. On May 11, 2015, Mayor Libby Schaaf wrote to Phil Tagami, reminding him of the
 17 City Council resolution passed in 2014 to “Oppose Transportation of Hazardous Fossil Fuel
 18 Materials” like coal through the City, and urging Tagami to reconsider the Utah deal:

19 Dear Phil,

20 I was extremely disappointed to once again hear Jerry Bridges mention the possibility
 21 of shipping coal into Oakland at the Oakland Dialogue breakfast. Stop it
 22 immediately. You have been awarded the privilege and opportunity of a lifetime to
 23 develop this unique piece of land. You must respect the owner and public’s decree
 24 that we will not have coal shipped through our city. I cannot believe this restriction
 25 will ruin the viability of your project. Please declare definitively that you will respect
 26 the policy of the City of Oakland and you will not allow coal to come through
 27 Oakland. If you don’t do that soon, we will all have to expend time and energy in a
 28 public battle that no one needs and will distract us all from the important work at
 hand of moving Oakland towards a brighter future.

Best,
 Libby

55. On May 14, 2015, Oakland City Council President Lynette Gibson McElhaney, who serves West Oakland where the former Army Base is located, told the Post News Group that she opposed coal exports in her neighborhood, stating that “West Oakland cannot be subjected to another dirty industry in its backyard.” She also highlighted the fact that to date, there had been no opportunity for lawmakers or the public to consider the effects of a coal terminal in the neighborhood: “[s]ince coal was not contemplated to be exported when the Army Base Development project was approved, the community has not yet had the chance to make their voices heard on this subject. This is unacceptable.”

56. Other City councilmembers including Dan Kalb and Rebecca Kaplan have also publicly opposed the transportation of coal and called for a stop to the coal terminal.

57. Phil Tagami has now taken the position that the Army Base developer can ship any commodity through facility under the terms of the development agreements. In April, he told the San Jose Mercury News that the terminal is entitled to export any type of commodity, except for “nuclear waste, illegal immigrants, weapons and drugs.”

September 21, 2015 City Council Hearing on Health and Safety Implications of Transporting Coal Through Army Base Redevelopment

58. Given the complete absence of environmental review for a coal terminal on Oakland’s waterfront, community members, including members of Communities for a Better Environment, Sierra Club, APEN, and San Francisco Baykeeper, called for the City to take action to oppose development of the terminal, and at the very least, to conduct environmental review on the effects of the proposed coal terminal.

59. On July 16, 2015, Councilmembers Dan Kalb, Rebecca Kaplan, and Laurence E. Reid moved for the City Council to hold a hearing for the purposes of taking testimony and receiving information on the public health and safety impacts of transporting coal through the City, and to evaluate whether the City has the authority under the development agreements to regulate the transportation and handling of coal products. The hearing also was intended as a follow-up to an ordinance passed by the City of Oakland on June 17, 2014, Opposing the Transportation of Hazardous Fossil Fuel Materials, including crude oil, coal, and petroleum coke.

1 60. In order to provide the City with information about the health and safety concerns
2 associated with coal exports, Petitioners submitted comment letters to the City on September 1,
3 2015, September 14, 2015, and September 21, 2015, which included expert reports and other data
4 about the harms of coal transportation. These organizations had also submitted earlier comment
5 letters to the Bay Area Transportation Authority and City Council on their concerns about the
6 proposed coal terminal, and calling for further environmental review of any coal terminal.

7 61. The hearing was held on September 21, 2015. Council chambers were packed with
8 hundreds of community members and interested parties attending to present testimony on the public
9 health and safety implications of coal transportation through the bulk terminal. Dozens of speakers
10 spoke out in opposition to the proposed coal terminal, including: concerned federal and state agency
11 officials; experts presenting on topics such as the health and safety harms of coal transportation,
12 particular concerns about the preliminary facility design, the climate-change implications of
13 perpetuating coal combustion, and the economic risks of a project involving a declining commodity;
14 members of the labor and faith communities in West Oakland; representatives of various
15 environmental and environmental justice organizations; and other concerned community members.

16 62. During the hearing, several councilmembers requested further information about
17 matters such as the baseline levels of pollution from truck and rail sources and their relative impacts
18 on community health, the potential impacts of a local terminal on community and worker health, the
19 economic viability of a coal terminal, the feasibility of mitigation measures proposed by the
20 developers at the hearing, and the impacts of comparably-sized coal terminals. Ordinarily, much of
21 this information would be provided through environmental review of the proposed coal terminal.

22 63. The City Council took testimony for over six hours, and the hearing ended after 10:00
23 p.m. At the close of the hearing, City councilmembers voted to keep the public hearing open until
24 October 5, 2015, and evaluate various potential options for further regulation related to health and
25 safety concerns, including an ordinance prohibiting coal, temporary or interim controls regulating
26 coal, and other measures to protect health and safety.

27 64. The City retains discretionary regulatory authority over the transportation and
28 handling of coal products pursuant to the development agreements, its inherent police and zoning

1 powers, and other regulatory oversight authority. The City plans to vote on potential regulatory
2 options by December 8, 2015.

3 **Preliminary Terminal Design Plans**

4 65. On or about September 10, 2015, less than two weeks prior to the public health and
5 safety hearing, one of the developers, TLS, posted preliminary design plans for the proposed coal
6 terminal. These plans were the first time members of the public had seen an outline for the facility
7 design. These plans are only preliminary engineering plans, and the facility design represented in
8 these plans is still subject to change.

9 66. These plans show a two-commodity facility, equipped to receive commodities by rail
10 and export it through a marine terminal. The facility capacity could range from 9.5 to 10.5 million
11 tons per year, depending on the various capacity estimates posted by the developer. Supplying this
12 size of facility at its maximum capacity would require two to three unit trains of 104 rail cars each
13 travelling to the facility every day of the year.

14 67. The preliminary basis design plans show that the material handling equipment –
15 storage domes and sheds, conveyors and loading machinery – will not be located in a fully enclosed
16 structure. Therefore, handling activity will result in emissions of particulate matter. Without more
17 specific design plans and more precise information about the amounts of coal that will be handled at
18 the facility, the amounts of particulate matter emissions, associated transportation pollution
19 emissions, work safety risks, and other environmental and health risks cannot be precisely
20 quantified. However, studies on comparably-sized facilities in the Pacific Northwest, as well as
21 studies done on coal transportation, storage, and handling risks, raise serious concerns about the
22 health, safety and environmental consequences of developing California's largest coal terminal in
23 Oakland.

24 **Environmental and Health Consequences of Coal Exports From Oakland**

25 68. As many speakers pointed out to the City Council during the hearing, transporting
26 coal through West Oakland will generate large quantities of coal dust emissions and create additional
27 health, safety, and environmental risks, which the community is ill-equipped to bear.

28

Localized Effects of Coal Transportation, Storage and Handling

69. Dr. Muntu Davis, the director of the Alameda County Public Health Department expressed concerns about coal transportation through the bulk terminal, stating that it would add “another source of air pollution to an area that is already disproportionately burdened by pollution sources that exist already.”

70. The preliminary nature of the design plans for the facility make it difficult to calculate the precise quantity of particulate matter and other emissions that will be produced by the facility. In her comments submitted at the September 21, 2015 public health hearing, Dr. Deb Niemeier of UC-Davis estimated that the just the coal trains unloading at the bulk terminal could generate up to 646 tons of coal dust emissions per year.

71. Exposure to coal dust from coal trains, coal storage piles, and loading and unloading practices raises serious health concerns. Coal dust contains many harmful components, including particulate matter, lead, and arsenic. Coal dust increases the likelihood of pneumonia and exacerbates inflammatory responses such as bronchitis and emphysema. Coal dust exposure has also been linked to increased cancer risks. The Utah coal that will be exported through Oakland carries additional risks, because it has elevated levels of silica, which can result in silicosis, pulmonary tuberculosis, and lung cancer.

72. Long-term exposure to the type of particulate matter contained in coal dust has been implicated in increased incidence of respiratory illness, cardiopulmonary mortality and decreased lung function. Short-term exposure has been associated with higher stroke mortality, myocardial infarction, and pollutant-related inflammatory responses.

73. Diesel combustion by the coal trains carrying coal to the terminal, as well as the ships ferrying coal away from the terminal will also contribute to the negative health effects associated with coal transportation. Coal trains will be powered by up to five diesel-fueled locomotives, which emit diesel particulate matter, as well as air pollutants like nitrogen oxides, carbon monoxide and sulfur dioxide. Ships also emit diesel particulate matter and other air pollutants. Exposure to diesel particulate matter has been linked to acute short-term symptoms such as headache, dizziness, light-headedness, nausea, and irritation of the eyes and respiratory systems. Long-term exposures can

1 result in cardiovascular disease, cardiopulmonary disease, increased probability of heart attacks, lung
2 cancer, and asthma. Health risk assessments from rail yards and ports have found significant cancer
3 risks from diesel particulate matter in individuals up to two miles away from rail and port terminals.

4 74. Children, the elderly, and those with existing health conditions are particularly
5 vulnerable to these pollution impacts. In vulnerable communities like West Oakland, there is a
6 higher risk of susceptibility and ability to recover as a result of cumulative environmental stress.

7 75. Even if enclosed loading facilities and other controls are put in place, serious
8 concerns about pollution remain. For example, air modeling for a supposed “state of the art”
9 covered coal export facility at the Port of Morrow in Oregon showed that the facility would greatly
10 exceed particulate matter and nitrogen oxide national ambient air quality standards. Both of these
11 pollutants have significant human health effects. Nitrogen oxides are highly reactive gasses that can
12 cause respiratory problems such as asthma attacks, respiratory tract syndrome, bronchitis, and
13 decreased lung function. Nitrogen oxides also contribute to visibility impairment, global warming,
14 acid rain, formation of ground-level ozone and formation of toxic chemicals.

15 76. Pollution controls also create serious concerns about water resources strained by the
16 ongoing drought. Water will be used to control dust during rail car unloading, at storage piles and
17 any other drop points, and during ship loading. If the full capacity of the facility is used to contain
18 coal – over nine million tons per year – 79.2 million gallons of water would be required every year
19 to control coal dust. This amount of water could supply over 3,000 Oakland residents per year.

20 77. Coal transportation has visible effects on the lives of residents living near coal
21 terminals. In Parchester Village, a largely black and Latino neighborhood in Richmond, California,
22 which has a private coal terminal of approximately 1 million tons per year, many residents have
23 complained about particulate matter emissions from the coal trains and coal piles at the terminals.
24 Residents report that the coal dust blows off the piles, covering the grass on their lawns and coating
25 their screen doors. One resident of Parchester Village stated that coal dust is everywhere and “[i]f
26 your truck sits here for two, three days without moving you can write your name on the front.” If the
27 bulk terminal exports nine to ten million tons of coal per year, the amount of emissions from an
28 Oakland facility could be nine to ten times that of the Richmond facility.

Worker Health and Safety Concerns Associated With Coal Terminal

78. An Oakland coal terminal will create significant health and safety risks for the workers handling the coal.

79. At the public health and safety hearing on September 21, 2015, International Longshore and Warehouse Union Local 10 member and former nurse Katrina Booker testified that her prior work handling coal at the Port of Stockton had made her sick. “At the end of the day my eyes were burning,” and “I went home and had nose bleeds. It was actually hard to breathe. It feels like you have weights on your chest.” She refuses to work the Stockton coal piles now.

80. Last year, the Port of Stockton exported around 2 million tons of coal. The throughput at the proposed Oakland terminal will likely be many times that if the terminal is built.

81. Long-term exposure to coal dust creates serious health problems for workers exposed to coal dust in enclosed conditions. There has been little to no scientific study of worker health in coal terminals. However, coal miners, who also work with coal in enclosed conditions, suffer from a range of ailments from prolonged direct exposure to coal dust, including chronic bronchitis, decreased lung function, emphysema, heart disease, cancer and increased risk of premature death.

82. Concerns about the adverse effects of coal dust exposure prompted the U.S. Department of Labor to pass regulations protecting coal miners from coal dust exposures. However, no such regulations are in place to protect facility workers in Oakland from coal dust exposures.

83. Terminals that ship bulk goods like coal produce far fewer jobs than terminals shipping other goods like large machines or goods transported on pallets. Coal is also an industry in deterioration – domestic and international demand for coal is declining, and in recent months several large coal companies have declared bankruptcy.

Species and Ecosystem Effects Associated With Coal Terminal

84. An Oakland coal terminal will also have adverse consequences for marine and terrestrial ecosystems in the San Francisco Bay Area, which include endangered and threatened species like green sturgeon, Chinook salmon, steelhead and longfin smelt.

85. At the terminal, coal dust can enter the aquatic environment through stormwater discharge, coal pile drainage run-off, and when coal dust from storage piles, transfer conveyor belts

1 and rail cars becomes deposited in the surrounding environment. Coal spillage can also occur during
2 the loading onto shipping tankers and barges, which sit directly on San Francisco Bay.

3 86. Coal contains numerous pollutants that are toxic at low concentrations in water such
4 as mercury, lead, arsenic, uranium, thorium, and polycyclic aromatic hydrocarbons (“PAHs”).
5 Exposure to coal dust has been found to interfere with the normal development of aquatic species
6 like salmon and steelhead. Coal particulates can find their way into the breathing apparatus of
7 aquatic species, affecting their ability to survive. Suspended coal sediments can reduce water
8 clarity, which negatively impacts predator fish species from finding food. Oxidizing coal particles
9 also reduce dissolved oxygen levels, which create adverse living conditions for bottom dwelling
10 species and can have reverberating impacts up the food chain.

11 87. Coal dust released along the train routes to Oakland can also have negative effects on
12 the surrounding environment. Coal particles can be carried long distances, settling in lakes and
13 streams, where they can increase acidity and change nutrient balances. Coal dust contamination can
14 also deplete soil nutrients, damage sensitive forests and farm crops, and affect the diversity of
15 ecosystems. An Oregon study correlated coal dust deposition with significantly higher soil
16 temperatures, decreased soil pH, increased soil moisture, and elevated heavy metal concentrations.

17 *Transportation Effects*

18 88. Coal trains are frequently 120 cars long, and can stretch over a mile in length. To cut
19 shipping costs, coal is most commonly transported in open rail cars, and the coal shipped from Utah
20 to the bulk terminal will likely be transported in open train cars. Coal trains shed large quantities of
21 dust as they travel, and the trains bound for Oakland are expected to shed up to 685,000 tons of coal
22 dust per year as they travel along the rail lines.

23 89. The shortest rail route from Utah to Oakland is through a northern route running train
24 cars through mountain areas, coming down into the Bay through Reno, Nevada, Auburn,
25 Sacramento, Parchester Village, then Richmond, before arriving in Oakland. Along the way, these
26 trains will travel through some of the state’s most densely populated areas, as well as through areas
27 adjacent to rivers and other sensitive waterways and important water sources. The longer southern
28

1 route from Utah to Oakland runs through Las Vegas, and the Central Valley cities of Fresno and
2 Stockton.

3 90. These routes travel through areas designated as “high hazard areas” by the State of
4 California’s Interagency Rail Safety Working Group, and accidents in these areas are likely due to
5 poor track conditions, steep grades, and poor bridge crossings. In December 2014, a dozen train cars
6 derailed on the northern stretch of rail near Sacramento, spilling their cargo of corn into the Feather
7 River. While no lasting damage was done, state officials expressed concerns about the safety risks
8 of transporting hazardous substances like crude oil through the same mountain passes, where they
9 pose serious risks to key drinking water sources. Coal trains bound for Oakland will travel through
10 these same mountain passes, and coal train derailments also risk contaminating water sources and
11 the environment around the accident site.

12 91. The Surface Transportation Board responsible for regulating interstate rail lines has
13 found that coal dust is “pernicious ballast foulant,” contributing to poor railroad safety conditions, as
14 it accumulates along the train tracks, contributing to track instability and increasing the risks of train
15 derailments.

16 *Climate Change and Other Effects of Exporting Coal Overseas*

17 92. Exporting coal from Oakland also enables the continued use of coal as a fuel source,
18 driving the continued production of climate change inducing greenhouse gas emissions, which have
19 both local and global effects.

20 93. As set forth by the United Nations’ Intergovernmental Panel on Climate Change,
21 unrestrained greenhouse gas emissions like carbon dioxide are responsible for increasing global
22 warming, and “[l]imiting climate change will require substantial and sustained reductions of
23 greenhouse gas emissions.”

24 94. Coal-fired power plants are a leading source of carbon dioxide emissions. In her
25 comments to the public health hearing, Dr. Niemeier estimated that if the maximum capacity of 10.5
26 million tons per year are exported through the Oakland bulk terminal, combusting that amount of
27 coal would generate 30 million tons per year of carbon dioxide. This amount is equivalent to the
28 carbon dioxide emissions of seven average power plants.

1 95. Continued coal combustion overseas will have tangible and harmful effects on the
2 local community. The byproducts of coal burned overseas do not remain in the region where the
3 coal was burned – soot, mercury, ozone, and other byproducts of coal combustion can travel across
4 the Pacific Ocean and affect the health of western states’ ecosystems and residents. In fact, the
5 National Oceanic and Atmospheric Administration recently found that air pollution in Asia
6 contributes to ozone pollution in the western United States. Coal combustion also drives climate
7 change effects contributing to sea-level rise and ocean acidification. Given the extensive amounts of
8 shoreline development, the Bay Area is particularly vulnerable to sea level rise, and rising sea levels
9 could flood residential areas and affect key commercial and industrial areas, like local airports,
10 highways and waste treatment plants.

11 96. Permitting a development that contributes to climate pollution frustrates the
12 commitments made by local and state officials to reducing climate change. The City has previously
13 committed to fighting climate change. In 2012, the City adopted an Energy and Climate Action Plan
14 setting forth actions to reduce the City’s energy consumption and “greenhouse gas emissions
15 associated with Oakland.” Most recently, on June 17, 2014, the Oakland City Council approved a
16 resolution opposing the transportation of hazardous fossil fuels like coal through the City, expressing
17 concern about the effects of coal exports and stressing the need for a transparent process and full
18 environmental review. In rejecting a proposed coal terminal near Jack London Square, the Port of
19 Oakland referenced these commitments and reaffirmed that a coal terminal would run counter to
20 California’s greenhouse gas reductions goals.

21 97. Lawmakers in the State of California have also recognized the urgent need to reduce
22 the production of greenhouse gas emissions, and over the years have passed landmark legislation
23 like AB 32 and issued executive orders to enable reductions goals. Most recently, in April 2015,
24 Governor Jerry Brown issued an executive order mandating that the state reduce its greenhouse gas
25 emissions to 40 percent below 1990 levels by 2030. Further, Joint Assembly Resolution 35 urged
26 Governor Brown to inform neighboring governors in Washington and Oregon of the health and
27 climate risks associated with exporting coal to countries with air quality regulations less stringent
28 than our own.

CEQA LEGAL BACKGROUND

98. The California Environmental Quality Act (“CEQA”), Public Resources Code §§ 21000 *et. seq.*, is a comprehensive statute designed to “to prevent[] environmental damage, while providing a decent home and satisfying living environment for every Californian.” (Pub. Res. § 21000(g).) Given its broad goals, the California Supreme Court has held that CEQA must be interpreted “to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 3 Cal.3d 247, 259.)

99. At its core, CEQA’s policies are designed to inform decision-makers and the public about the potential significant environmental effects of a project. (Cal. Code Regs., tit. 14, § 15002(a)(1) [the regulations at tit. 14, §§ 15000 *et seq.* are hereinafter cited as “Guidelines”].) Such disclosure ensures that “long term protection of the environment . . . shall be the guiding criterion in public decisions.” (Pub. Res. Code § 21001(d).)

100. An agency must prepare an environmental impact report (“EIR”) where it proposes to carry out or approve a “project that may have a significant effect on the environment.” (Pub. Res. § 21151.) “Significant effect” means a “substantial, or potentially substantial, adverse change in the environment.” (Pub. Res. § 21068; Guidelines § 15002(g).) The EIR is the “heart of CEQA” and serves as “an environmental alarm bell whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*Laurel Heights Improvement Ass’n. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.)

101. An agency shall prepare a subsequent or supplemental EIR where substantial changes are proposed in a project, where substantial changes occur with respect to the circumstances under which a project is being undertaken, or where new information which was not known and could not have been known at the time the environmental impact report was certified becomes available. (Pub. Res. §21166; Guidelines §15162.)

102. A lawsuit compelling performance of an agency’s duty to conduct further environmental review may be filed within 180 days of the time the “plaintiff knows or should have known that the project underway differs substantially from the one described in the initial EIR.” (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agric. Assn.* (1986) 42 Cal.3d 929, 933; Pub.

1 Res. § 21167.)

2 **FIRST CAUSE OF ACTION**
 3 **(Violation of CEQA – Failure to Prepare Supplemental or Subsequent EIR Because of**
 4 **Substantial Changes in Project)**

5 103. Petitioners incorporate herein by reference the allegations contained in the foregoing
 6 paragraphs.

7 104. Under CEQA, an agency has a duty to prepare a subsequent or supplemental EIR
 8 when “substantial changes are proposed in the project which will require major revisions of the
 9 environmental impact report.” (Pub. Res. §21166(a); Guidelines §15162(a)(1).)

10 105. Coal transportation is a dirty and dangerous business, and has the potential to cause
 11 significant, adverse effects to the community and environment around the Army Base
 12 redevelopment.

13 106. The specific effects of coal transportation through the Army Base redevelopment
 14 were never studied as part of the 2002, 2012, or other environmental review done on the
 15 redevelopment.

16 107. The possibility of coal exports through the redevelopment property was never
 17 discussed during contract negotiations between the City and developers. On multiple occasions, the
 18 developer reassured the City and the Public that coal exports would not be part of the
 19 redevelopment. The recent commitment on the part of the developer to ship Utah coal is a
 20 “substantial change” in the project, which will require major revisions of the EIR, to properly
 21 account for the additional risks of coal transportation. The City and the public did not know, and
 22 could not have known, of this change in the project until April 7, 2015 at the earliest.

23 108. By failing to revise the EIR or Initial Study for the former Oakland Army Base to
 24 reflect this recent substantial change in the project, the City of Oakland has committed a prejudicial
 25 abuse of discretion, failed to proceed in the manner required by law, and acted without substantial
 26 evidentiary support in violation of CEQA.

27 **SECOND CAUSE OF ACTION**
 28 **(Violation of CEQA – Failure to Prepare Supplemental or Subsequent EIR Because of**
Substantial Changes in Circumstances Under Which Project Is Being Undertaken)

109. Petitioners incorporate herein by reference the allegations contained in the foregoing

1 paragraphs.

2 110. Under CEQA, an agency has a duty to prepare a subsequent or supplemental EIR
3 when “substantial changes occur with respect to the circumstances under which the project is being
4 undertaken which will require major revisions of the environmental impact report.” (Pub. Res.
5 §21166(b); Guidelines §15162(a)(2).)

6 111. Coal transportation is a dirty and dangerous business, and has the potential to cause
7 significant, adverse effects to the community and environment around the Army Base
8 redevelopment.

9 112. The specific effects of coal transportation through the Army Base redevelopment
10 were never studied as part of the 2002, 2012, or other environmental review done on the
11 redevelopment.

12 113. The possibility of coal exports through the redevelopment property was never
13 discussed during contract negotiations between the City and developers. On multiple occasions, the
14 developer reassured the City and the Public that coal exports would not be part of the
15 redevelopment. The recent commitment on the part of the developer to ship Utah coal is a
16 “substantial change” in the circumstances under which the project is being undertaken, which will
17 require major revisions of the EIR, to properly account for the additional risks of coal transportation.
18 The City and the public did not know, and could not have known, of this change in the project until
19 April 7, 2015 at the earliest.

20 114. By failing to revise the EIR or Initial Study for the former Oakland Army Base to
21 reflect this recent substantial change in the circumstances under which the project is being
22 undertaken, the City of Oakland has committed a prejudicial abuse of discretion, failed to proceed in
23 the manner required by law, and acted without substantial evidentiary support in violation of CEQA.

24 **THIRD CAUSE OF ACTION**
25 **(Violation of CEQA – Failure to Prepare Supplemental or Subsequent EIR Because of New**
26 **Information)**

26 115. Petitioners incorporate herein by reference the allegations contained in the foregoing
27 paragraphs.

28 116. Under CEQA, an agency has a duty to prepare a subsequent or supplemental EIR

1 when “new information, which was not known and could not have been known at the time the
 2 environmental impact report was certified as complete, becomes available.” (Pub. Res. §21166(c);
 3 Guidelines §15162(a)(3).)

4 117. Coal transportation is a dirty and dangerous business, and has the potential to cause
 5 significant, adverse effects to the community and environment around the Army Base
 6 redevelopment.

7 118. The specific effects of coal transportation through the Army Base redevelopment
 8 were never studied as part of the 2002, 2012, or other environmental review done on the
 9 redevelopment.

10 119. The possibility of coal exports through the redevelopment property was never
 11 discussed during contract negotiations between the City and developers. On multiple occasions, the
 12 developer reassured the City and the Public that coal exports would not be part of the
 13 redevelopment. The recent commitment on the part of the developer to ship Utah coal constitutes
 14 “new information” about the project, which was not known at the time the 2002 and 2012
 15 environmental documents were completed, and which will require major revisions of the EIR, to
 16 properly account for the additional risks of coal transportation. The City and the public did not
 17 know, and could not have known, of this change in the project until April 7, 2015 at the earliest.

18 120. By failing to revise the EIR or Initial Study for the former Oakland Army Base to
 19 reflect this new information, the City of Oakland has committed a prejudicial abuse of discretion,
 20 failed to proceed in the manner required by law, and acted without substantial evidentiary support in
 21 violation of CEQA.

22 **FOURTH CAUSE OF ACTION**
 23 **(Violation of CEQA – Failure to Prepare Addendum)**

24 121. Petitioners incorporate herein by reference the allegations contained in the foregoing
 25 paragraphs.

26 122. Under CEQA, an agency has a duty to prepare an addendum to a previously certified
 27 EIR if “some changes or additions are necessary but none of the conditions described in Section
 28 15162 calling for the preparation of a subsequent EIR have occurred.” (Guidelines §15164(a).)

123. Coal transportation is a dirty and dangerous business, and has the potential to cause significant, adverse effects to the community and environment around the Army Base redevelopment.

124. The specific effects of coal transportation through the Army Base redevelopment were never studied as part of the 2002, 2012 or other environmental review done on the redevelopment.

125. The possibility of coal exports through the redevelopment property was never discussed during contract negotiations between the City and developers. On multiple occasions, the developer reassured the City and the Public that coal exports would not be part of the redevelopment. The recent commitment on the part of the developer to ship Utah coal constitutes a change in the nature of the project, which was not known at the time the 2002 and 2012 environmental documents were completed, and which will require revisions of the EIR and/or Initial Study, to properly account for the additional risks of coal transportation. The City and the public did not know, and could not have known, of this change in the project until April 7, 2015 at the earliest.

126. By failing to complete an addendum addressing the development of bulk terminal as a coal terminal, and the environmental, health and safety effects of this development, the City of Oakland has committed a prejudicial abuse of discretion, failed to proceed in the manner required by law, and acted without substantial evidentiary support in violation of CEQA.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as set forth below:

A. For a writ of mandate or peremptory writ issued under the seal of this Court and directing the City of Oakland to:

1. Stay pending approvals for the Oakland Army Base redevelopment and Oakland Bulk and Oversize Terminal; and
2. Conduct the environmental review required by CEQA for the Oakland Army Base redevelopment and Oakland Bulk and Oversize Terminal;
3. Refrain from granting any further approvals for the Oakland Army Base redevelopment or Oakland Bulk and Oversize Terminal until the City of

Oakland fully complies with the requirements of CEQA.

B. For Petitioners' fees and costs, including reasonable attorneys' fees and expert witness costs, as authorized by Code of Civil Procedure § 1021.5 and any other applicable provisions of law.

C. For such other legal and equitable relief as this Court deems appropriate and just.

DATED: October 2, 2015

Respectfully submitted,



Irene V. Gutierrez, CA Bar No. 252927
Stacey P. Geis, CA Bar No. 181444
EARTHJUSTICE
50 California Street Ste. 500
San Francisco, CA 94111
Tel: 415-217-2000
Fax: 415-217-2040
Email: igutierrez@earthjustice.org,
sgeis@earthjustice.org
Attorneys for Petitioners

Jessica Yarnall Loarie, CA Bar No. 252282
SIERRA CLUB
85 Second Street, 2nd Flr.
San Francisco, CA 94105
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Email: jessica.yarnall@sierraclub.org
Attorney for Sierra Club

VERIFICATION

I, Michelle Myers, hereby declare:

I am San Francisco Bay Chapter Director at Sierra Club, a non-profit corporation with offices in San Francisco, California and elsewhere in the United States. The facts alleged in the above Petition are true to my personal knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on this 2nd day of October 2015 at San Francisco, California.

A handwritten signature in cursive script, reading "Michelle S. Myers", is written over a horizontal line.

EXHIBIT A



EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

October 2, 2015

VIA EMAIL and U.S. MAIL

Ms. Barbara Parker
City Attorney
Oakland City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
c/o jsmith@oaklandcityattorney.org

Oakland City Clerk
1 Frank Ogawa Plaza, 1st and 2nd Floors
Oakland, CA 94612
cityclerk@oaklandnet.com

Re: Notice of Intent to File California Environmental Quality Act Petition

Dear Ms. Parker:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that Communities for a Better Environment, the Sierra Club, San Francisco Baykeeper, and Asian Pacific Environmental Network ("Petitioners") intend to file a verified petition for writ of mandate against the City of Oakland ("City"), challenging the City's failure to complete the subsequent or supplemental environmental impact report ("EIR") required by the California Environmental Quality Act ("CEQA") regarding the proposal to develop a coal export terminal at the Oakland Army Base redevelopment.

The petition seeks a writ of mandate directing the City to refrain from issuing additional approvals for the Army Base redevelopment and to complete the additional environmental review required by CEQA. The petition will be filed in Alameda County Superior Court on October 2, 2015. Please find attached a courtesy copy of the Petition.

Sincerely,

Irene V. Gutierrez
Stacey P. Geis
Counsel for Petitioners

PROOF OF SERVICE

I am a citizen of the United States of America and a resident of the City and County of San Francisco; I am over the age of 18 years and not a party to the within entitled action; my business address is 50 California Street, Suite 500, San Francisco, California.

I hereby certify that on October 2, 2015, I served via electronic mail and U.S. first class mail one true copy of the **Notice of Intent to File California Environmental Quality Act**

Petition on the parties listed below:

Ms. Barbara Parker
City Attorney
Oakland City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
c/o jsmith@oaklandcityattorney.org

Oakland City Clerk
1 Frank Ogawa Plaza, 1st and 2nd Floors
Oakland, CA 94612
cityclerk@oaklandnet.com

I certify under penalty of perjury that the foregoing is true and correct. Executed on October 2, 2015 in San Francisco, California.

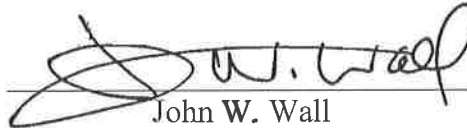

John W. Wall

EXHIBIT B

1 Stacey P. Geis, CA Bar No. 181444
 sgeis@earthjustice.org
 2 Irene V. Gutierrez, CA Bar No. 252927
 igutierrez@earthjustice.org
 3 EARTHJUSTICE
 50 California Street, Ste. 500
 4 San Francisco, CA 94111
 Tel: 415-217-2000/Fax: 415-217-2040
 5 Attorneys for Petitioners

6 Jessica Yarnall Loarie, CA Bar No. 252282
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 7 SIERRA CLUB
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 8 San Francisco, CA 94105
 Tel: 415-977-5636/Fax: 415-977-5793
 9 Attorney for Sierra Club

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 IN AND FOR THE COUNTY OF ALAMEDA

13 COMMUNITIES FOR A BETTER
 ENVIRONMENT, SIERRA CLUB, SAN
 14 FRANCISCO BAYKEEPER, and ASIAN
 PACIFIC ENVIRONMENTAL NETWORK,

15 Petitioners,

16 v.

17 CITY OF OAKLAND, and DOES 1 through
 18 100, inclusive,

19 Respondents.

20 PROLOGIS CCIG OAKLAND GLOBAL, LLC;
 TERMINAL LOGISTICS SOLUTIONS;
 21 OAKLAND BULK AND OVERSIZED
 TERMINAL, LLC and DOES 101 through 199,
 22 inclusive,

23 Real Parties In Interest.

NOTICE TO THE ATTORNEY GENERAL
 OF THE STATE OF CALIFORNIA OF
 PETITION FOR WRIT OF MANDATE

24 To the Attorney General of the State of California:

26 PLEASE TAKE NOTICE, under Public Resources Code § 21167.7 and Code of Civil
 27 Procedure § 388, that on October 2, 2015, Communities for a Better Environment, Sierra Club, San
 28 Francisco Baykeeper, and Asian Pacific Environmental Network ("Petitioners"), filed a verified

1 petition for writ of mandate against the City of Oakland ("City"), challenging the City's failure to
2 complete the subsequent or supplemental environmental impact report ("EIR") required by the
3 California Environmental Quality Act ("CEQA") regarding the proposal to develop a coal export
4 terminal at the Oakland Army Base redevelopment. The petition seeks a writ of mandate directing
5 the City to refrain from issuing additional approvals for the Army Base redevelopment and to
6 complete the additional environmental review required by CEQA. A copy of the petition is provided
7 along with this notice.

8
9 Sincerely,

10 DATED: October 2, 2015

11 
12 IRENE GUTIERREZ
13 STACEY GEIS
14 Earthjustice
15 *Attorneys for Petitioners*

16
17 JESSICA YARNALL LOARIE
18 Sierra Club
19 *Attorney for Sierra Club*
20
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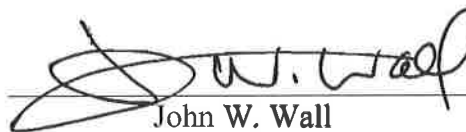
PROOF OF SERVICE

I am a citizen of the United States of America and a resident of the City and County of San Francisco; I am over the age of 18 years and not a party to the within entitled action; my business address is 50 California Street, Suite 500, San Francisco, California.

I hereby certify that on October 2, 2015, I served via U.S. first class mail one true copy of the document herein on the party listed below:

Office of the Attorney General
1515 Clay Street
Oakland, CA 94612-1499

I certify under penalty of perjury that the foregoing is true and correct. Executed on October 2, 2015 in San Francisco, California.



John W. Wall

EXHIBIT 8

Kevin D. Siegel (SBN 194787)
 E-mail: ksiegel@bwslaw.com
 Stephen E. Velyvis (SBN 205064)
 E-mail: svelyvis@bwslaw.com
 Megan A. Burke (SBN 267986)
 E-mail: maburke@bwslaw.com
BURKE, WILLIAMS & SORESENSEN, LLP
 1901 Harrison Street, Suite 900
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*EXEMPT FROM FILING FEES PER
 GOVERNMENT CODE § 6103*

Barbara J. Parker (SBN 69722)
 City Attorney
 Otis McGee, Jr. (SBN 71885)
 Chief Assistant City Attorney
 Selia M. Warren (SBN 233877)
 Deputy City Attorney
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Attorneys for Respondent
 CITY OF OAKLAND

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA**

**COMMUNITIES FOR A BETTER
 ENVIRONMENT, SIERRA CLUB, SAN
 FRANCISCO BAYKEEPER, and ASIAN
 PACIFIC ENVIRONMENTAL NETWORK,**

Petitioners,

v.

**CITY OF OAKLAND, and DOES 1 through
 100, inclusive,**

Respondents.

**PROLOGIS CCIG OAKLAND GLOBAL, LLC;
 TERMINAL LOGISTICS SOLUTIONS;
 OAKLAND BULK AND OVERSIZED
 TERMINAL, LLC and DOES 101 through 199,
 inclusive,**

Real Parties in Interest.

Case No. RG15788084

*Assigned For All Purposes To
 Hon. Evelio Grillo, Dept. 14*

**RESPONDENT CITY OF
 OAKLAND'S MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF DEMURRER TO
 VERIFIED PETITION FOR WRIT
 OF MANDATE**

Date: December 16, 2015
Time: 1:30 p.m.
Dept: No. 14
Reservation: #1682628

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Respondent City of Oakland (the "City") submits this memorandum of points and authorities in support of its demurrer to the Verified Petition for Writ of Mandate ("Petition") filed by Petitioners Communities for a Better Environment et al. (collectively, "Petitioners").

I. INTRODUCTION

Petitioners allege that the City is required to perform supplemental environmental review with respect to the redevelopment of the Oakland Army Base. But Petitioners do not identify any discretionary City decision which they challenge, or could challenge, under CEQA. This fundamental, fatal and incurable defect of the Petition requires the sustaining of the City's demurrer to the Petition without leave to amend.

Three interrelated lines of analysis establish this conclusion.

1. The California Environmental Quality Act ("CEQA") applies when a public agency makes a discretionary decision to commit to a course of action on a project that may have significant impacts on the environment. In order to advance CEQA's purpose of fostering informed decision making, the agency conducts CEQA review when it makes its discretionary decision. Once the decision is made (with consideration of the environmental analysis conducted pursuant to CEQA) and the statute of limitations has expired, additional environmental review may only be required when the agency makes a subsequent discretionary approval. Here, Petitioners are time barred from challenging any of the discretionary approvals issued to date (see Real Parties' demurrer), and they have not identified any pending discretionary decisions for which CEQA review may be required. Thus, the Petition fails to state a cause of action.¹

2. To state a cause of action for a writ of traditional mandate, the petitioner must show a clear, present and usually ministerial duty owed by the respondent and a beneficial right belonging to the petitioner. To state a cause of action for writ of administrative mandate, the petitioner must challenge a final administrative decision. Here, Petitioners can do neither. Regarding the former, Petitioners have identified no present duty for the City to conduct environmental review, and they have no beneficial right to the performance of such review.

¹ As discussed below (see footnote 8), the City is evaluating potential discretionary actions it may yet take and whether additional environmental review will be required.

Regarding the latter, there is no administrative decision which Petitioners could timely challenge, and they cannot seek a writ of administrative mandate for any anticipated order. Thus, the Petition fails to state any writ claim.

3. The courts resolve actual controversies. They do not decide unripe disputes and issue advisory opinions. Here, Petitioners have not presented a justiciable, ripe controversy. They have not pleaded (and cannot plead) a timely challenge to any approval issued by the City, and the City has yet to take action with respect to potential future discretionary decisions (for which environmental review might be required regarding coal). Thus, Petitioners have not pleaded a justiciable cause of action.

Therefore, this Court should sustain the City's demurrer, without leave to amend.

II. STATEMENT OF FACTS

The Petition alleges the following facts, the truth of which are assumed for the limited purposes of the City's demurrer.

The U.S. Government turned over the former Oakland Army Base to the City in 1999. (Petition, ¶ 3.) In 2002, the City certified the Army Base Redevelopment Plan Environmental Impact Report ("EIR") and approved the Army Base Redevelopment Plan. The project described in the EIR includes distribution and maritime support facilities. (Petition, ¶¶ 33, 38, 39.)

In 2012, the City prepared an Addendum to the EIR and entered into a Lease Disposition and Development Agreement ("LDDA") with Real Party Prologis CCIG Oakland Global, LLC ("Prologis CCIG"). In 2013, the City entered into a Development Agreement ("DA") with Prologis CCIG. (Petition, ¶¶ 34, 37.)

The Addendum discusses development of the Oakland Bulk and Oversized Terminal ("Terminal"). The Addendum states that export cargo would include non-containerized bulk goods but does not specify that such goods might include coal. (Petition, ¶¶ 39-40.) The LDDA and DA are consistent in this regard. (Petition, ¶ 41.)

Meanwhile, Prologis CCIG pursued plans—without City support, knowledge or involvement—to reach agreements with Utah-based entities to export coal through the Terminal, reaching an accord in April of 2015. (Petition, ¶¶ 42-43, 45, 46, 107.)

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Petitioners, other members of the public, and the City expressed surprise when Prologis CCIG's plans to transport coal were publicized in April 2015. (See, e.g., Petition, ¶¶ 42, 44, 47, 52, 54, 107, 113, 119, 125.) While individual City officials have commented about Prologis CCIG's newly disclosed plans, and the City Council adopted a resolution on June 17, 2014 generally opposing the transportation of fossil fuels and coal (after approval of the Development Agreement), the City has not taken an official position on whether Real Parties' project approvals entitle them to transport coal.² The City is studying the issue, including whether the City has authority under the Development Agreement to regulate or prohibit the transport of coal, and has convened public hearings before the City Council to consider the issue. (Petition ¶¶ 54, 59-64.)

In September 2015, Petitioners informed the City about their objections to coal, in connection with the City Council's public hearing for considering the public health and/or safety impacts of coal and the City's authority under the Development Agreement. (Petition, ¶¶ 59-60.)

The transportation and burning of coal have significant environmental effects, locally and globally, for local residents, workers, wildlife, and climate change, among other things. (Petition, ¶¶ 69-97.)

The Petition does not identify any discretionary decision at issue. (See Petition, ¶¶ 98-126.) Instead, it asserts that Petitioners were entitled to file suit within 180 days of discovering Real Parties-in-Interest's coal plans (in April 2015) based upon a private contract between Real Parties and third-parties that was not approved by the City. (Petition, ¶ 102, 107.)

Petitioners purport to state four causes of action. The causes of action are variations of the gravamen allegation that the City was required to prepare additional environmental review to address potential impacts associated with importing coal via rail into and exporting it out of the Terminal via ship (e.g., a supplemental EIR, a subsequent EIR or an addendum), pursuant to Public Resources Code section 21166 and CEQA Guidelines sections 15162, 15163 and 15164.³

² The Petition inconsistently states that the City Council adopted a resolution (¶ 1) and ordinance (¶ 59) opposing the transportation of fossil fuels. It was a resolution. (See Resolution No. 85054 C.M.S. [see <https://oakland.legistar.com/LegislationDetail.aspx?ID=1747455&GUID=D41B7760-10B0-455E-B1F5-88894FBAD097> (accessed November 4, 2015)].)

³ The CEQA Guidelines are found at Title 14 of the California Code of Regulations.

(Petition, ¶¶ 103-126.) Specifically, relying on the factors listed in CEQA Guidelines section 15162(a), the first, second and third causes of action allege that further environmental review is required because of changes to the project, new circumstances, and new information, respectively. Alternatively, the fourth cause of action alleges, if the factors of section 15162(a) are not triggered, an addendum is required pursuant to section 15164(a). (Petition, ¶¶ 103-126.)

III. ANALYSIS

A. Standards for Demurrer.

Allegations are generally accepted as true for the purposes of a demurrer. (*Long Beach Equities, Inc. v. County of Ventura* (1991) 231 Cal.App.3d 1016, 124.) But a court should reject a pleading's "contentions, deductions or conclusions of fact or law." (*Brenner Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 180.) This Court may consider judicially noticeable facts and attachments to a complaint. (*Sirrott v. Latts* (1992) 6 Cal.App.4th 923, 928; *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

A court should sustain a general demurrer when the non-conclusory allegations do not state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10(e); *Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 895.)

B. The Petition Fails to State a Cause of Action.

1. The Petition Does Not State a CEQA Challenge to Any Approval.

a. **CEQA Applies When the Agency Makes a Discretionary Decision to Commit to a Course of Action; Once a Decision Has Been Made and the Statute of Limitations Has Expired, Additional Environmental Review May Only Be Required When the Agency Makes a Subsequent Discretionary Decision.**

The fundamental purpose of CEQA is to foster informed decision-making by public agencies when they make discretionary decisions regarding a project that may have a significant effect on the environment. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 402.) To meet this purpose, CEQA review is required when a public agency makes a discretionary decision to approve a project that may have a significant effect on the environment (absent an exemption), not afterwards. (Pub. Resources Code

§ 21080(a);⁴ *Laurel Height*, 47 Cal.3d at 394 (“A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved”); *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 128-29, 132, 134-35 (CEQA review required at time of entry of conditional agreement to facilitate private development project; post-approval environmental review would not facilitate the informed decision making for which environmental review is prepared).)

“‘Approval’ means the decision by a public agency which commits the agency to a definite course of action in regard to a project” (*Neighbors For Fair Planning v. City and County of San Francisco* (2013) 217 Cal.App.4th 540, 555 (“*Neighbors v. CCSF*”), quoting CEQA Guidelines § 15352(a).) Thus:

- If an agency does **not** approve a project, CEQA review is not required. (Pub. Resources Code § 21080(b)(5) (CEQA “does not apply to any of the following activities ... (5) [p]rojects which the public agency rejects or disapproves”); see also *Sunset Sky Ranch Pilots Ass’n v. County of Sacramento* (2009) 47 Cal.4th 902, 909 (CEQA does not apply unless an agency approves a project); CEQA Guidelines § 15002(c) (“Private action is not subject to CEQA unless the action involves governmental participation, financing or approval”).)
- CEQA does not apply when the agency engages in project planning, commits funds to the consideration of projects, and discusses the benefits of a project, but does not proceed with an approval action. (*Neighbors v. CCSF*, 217 Cal.App.4th at 550-56 (loan of nearly \$1 million to project sponsor, introduction of zoning ordinance for project, and commitment of staff resources did not trigger CEQA).)
- It is when the agency takes an approval action that it must comply with CEQA. (See, e.g., *Laurel Heights*, 47 Cal.3d at 394; *Save Tara*, 45 Cal.4th at 134-35.)

After any agency has taken an approval action, an interested person may file suit to challenge the legality of the decision, on the ground that the public agency did not comply with CEQA when it made the decision. As CEQA’s statute of limitations states: “An action or proceeding to attack, review, set aside, void, or annul one of the following acts or decision of the public agency on the grounds of noncompliance with this division [CEQA] ... shall be

⁴ Section 21080(a) provides: “Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.”

commenced as follows [listing acts and decisions and associated limitations deadlines].” (Pub. Resources Code § 21167.) And as CEQA’s standard of review provisions state:

- “Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.” (Pub. Resources Code § 21168.)
- “In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion...” (Pub. Resources Code § 21168.5.)

CEQA provides strict and short statute of limitations for the purpose of providing finality and predictability with respect to project approvals. As the Supreme Court explained:

To ensure finality and predictability in public land use planning decisions, statutes of limitations governing challenges to such decisions are typically short. [Citations.] The limitations periods set forth in CEQA adhere to this pattern; indeed, as the CEQA Guidelines themselves assert, “CEQA provides *unusually short* statutes of limitations on filing court challenges to the approval of projects under the act.” (CEQA Guidelines, § 15112, subd. (a), italics added.) As the CEQA Guidelines further explain, “[t]he statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.” (CEQA Guidelines, § 15112, subd. (b).)

(*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 499, emphasis added.)⁵ Thus, if a timely suit is not filed to challenge the agency’s discretionary decision on a project pursuant to Public Resources Code section 21167, any challenge to that approval is forever precluded. (*Ibid.*; see also *Alliance for the Protection of the Auburn Community*

⁵ CEQA “contains a number of provisions evidencing the clear ‘legislative determination that the public interest is not served unless challenges under CEQA are filed promptly.’” (*Board of Supervisors v. Superior Court* (1994) 23 Cal.App.4th 830, 836, quoting *Oceanside Marina Towners Assn. v. Oceanside Community Development Com.* (1987) 187 Cal.App.3d 735, 741.) Of paramount importance are the short statutes of limitations set forth in Public Resources Code section 21167. (See *id.* at 837.)

1 *Environment v. County of Placer* (2013) 215 Cal.App.4th 25, 34 (petitioners may not be relieved
 2 of their failure to file within CEQA's statute of limitations due to excusable mistake); *Citizens*
 3 *For A Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 111 (short,
 4 dispositive statutes of limitations preclude untimely challenges to sufficiency of environmental
 5 review for an initial project approval, irrespective of claims that new information requires further
 6 action to protect the environment).)

7 Thus, once it has made a discretionary approval, an agency may only perform
 8 supplemental environmental review when it grants a subsequent approval. (*Cucamongans United*
 9 *for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479; *Fort*
 10 *Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1597.)
 11 "Once such an approval has been given, CEQA's role in it is completed. If qualified new
 12 information thereafter develops, a supplemental or subsequent EIR must be prepared in
 13 connection with the next discretionary approval, if any. But information appearing after an
 14 approval does not require reopening of that approval." (*Fort Mojave*, 38 Cal.App.4th at 1597.)

15 Indeed, this rule is written into CEQA Guidelines section 15162(c), which states:

16 Once a project has been approved, the lead agency's role in project
 17 approval is completed, unless further discretionary approval on that
 18 project is required. Information appearing after an approval does not
 19 require reopening of that approval. If after the project is approved, any of
 20 the conditions described in subdivision (a) occurs, a subsequent EIR or
 21 negative declaration shall only be prepared by the public agency which
 22 grants the next discretionary approval for the project, if any. In this
 23 situation no other responsible agency shall grant an approval for the
 24 project until the subsequent EIR has been certified or subsequent negative
 25 declaration adopted. [Emphasis added.]

26 For example, in *Cucamongans*, the plaintiff sought to compel the city to perform
 27 additional environmental review based on post-approval information. But there was no
 28 discretionary decision for which environmental review could be required.⁶ As the Court ruled:

29 In this case, the negative declaration and subdivision plan were approved
 30 in 1990. [Plaintiff] contends that "new information of substantial
 31 importance," that arose subsequent to the adoption of the negative
 32 declaration, warrants further environmental review. [Plaintiff], however,

33 ⁶ Not only is this outcome dictated by law, it is logical. If there is no discretionary
 34 approval, there is no purpose for which to engage in environmental review (as the decision
 35 makers cannot take any action in light of any additional environmental review).

1 simply ignores the Guidelines, treatises and cases that state that
 2 **[supplemental environmental review]** can only be prepared in
 3 **connection with a discretionary approval.** Here, [Plaintiff] concedes
 4 that the City denied [the applicant's] design review application. Hence,
 5 there was no discretionary approval that would authorize the preparation
 6 of [supplemental environmental review].

7 ((*Cucamongams*, 82 Cal.App.4th at 479, emphasis added; cf. *Citizens For A Megaplex-Free*
 8 *Alameda*, 149 Cal.App.4th at 108-10 (when statute of limitations to challenge initial decision has
 9 expired, petitioners cannot reopen CEQA review for that decision; instead, after agency makes a
 10 subsequent discretionary decision, the issue is whether substantial evidence supports its
 11 determination regarding additional environmental review, if any, prepared for that decision).)⁷

12 **b. Petitioners Have Not Stated a CEQA Cause of Action.**

13 Petitioners have not identified any discretionary decision or action taken by the City
 14 which they seek to challenge. Nor could they.

15 ⁷ *El Morro Community Ass'n v. California Dept. of Parks and Recreation* (2004) 122
 16 Cal.App.4th 1341, is in accord. In ruling that trial court properly denied the petitioner's motion
 17 to augment the administrative record, the Fourth District explained that the post-approval
 18 materials were "*extrinsic* to the administrative record" (p. 1359) because they were not before the
 19 decision maker at the time he made the challenged decision, and there was no subsequent
 20 discretionary decision at issue:

21 Finally, as to the proffered newsletter and news release, we find no error
 22 in the court's refusal to admit these documents.... EMCA argues on
 23 appeal that deletion of the signalized crossing is a significant change to the
 24 project, which this EIR is inadequate to address. [footnote omitted.]

25 But the postdecision change is completely irrelevant in *this* proceeding. It
 26 is axiomatic that once an agency has given its requisite approval to a
 27 project, CEQA's role in *that project* is completed. Judicial review is
 28 limited to the CEQA determination for the project approved. **If**
significant new information thereafter develops, a supplemental or
subsequent EIR might be required in connection with the agency's
next discretionary approval, if any. [Citations.] But information arising
 after an approval does not require reopening of that approval. [Citations.]
 Furthermore, "if an agency authorizes major modifications to a project
 without [first] determining whether further CEQA review is required, its
 decision to approve the changes to the project may be set aside."
 [Citations.] But whether the changes necessitate further CEQA review is
 an issue that must be addressed by the Department in the first instance—
 not by the trial court or this court. [Citations.] "If post-approval
 environmental review were allowed, EIR's would likely become nothing
 more than post hoc rationalizations to support action already taken."
 [Citation.]

((*El Morro Community Ass'n*, 122 Cal.App.4th at 1360-61; italics in original; bold added.))

1 As discussed in Real Parties' demurrer, the statute of limitations has expired for each of
 2 the past approvals taken by the City. And Petitioners acknowledge that a private contract
 3 between Real Parties and third parties does not constitute a discretionary approval by the City.
 4 (See Petition, ¶¶ 107, 113, 119, 125.) Thus, the Petition fails to state a cause of action with
 5 respect to the sufficiency of environmental review for any action taken to date.

6 Nonetheless, Petitioners suggest that supplemental environmental review is now required.
 7 But Petitioners have not identified any City decision for which supplemental environmental
 8 review could be required (or would be of any benefit for informed decision making, CEQA's
 9 purpose).⁸ Because they have not identified any City decision or action, the Petition fails to state
 10 a cause of action with respect to whether additional environmental review is required.

11 Accordingly, the Petition fails to state fact sufficient to constitute a cause of action.

12 2. The Petition Also Fails to State a Claim for a Writ of Mandate.

13 Petitioners seek a traditional writ of mandate or, alternatively, administrative writ of
 14 mandate. (Petition, ¶ 20; see also p. 27-28 (prayer).) But they have not pleaded a cause of action
 15 for a writ of mandate.

16 A petitioner seeking a writ of *traditional* mandate must prove: (1) a clear, present, and
 17 usually ministerial duty owed by respondent and (2) a clear, present, and beneficial right
 18 belonging to the petitioner in the performance of that duty. (Code Civ. Proc. §§ 1085, 1086;
 19 *Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 618.) Mandate is an
 20 extraordinary remedy; there is no absolute right to a writ. (*Clough v. Baber* (1940) 38
 21 Cal.App.2d 50, 52.) "The necessity of issuing the writ must be clearly established. It will not
 22 issue in doubtful cases." (*Ibid.*)

23
 24 ⁸ The City is evaluating discretionary decisions it may take in the future with respect to
 25 Real Parties' project (e.g., additional permit requirements), or which will apply to Real Parties'
 26 project (e.g., new legislation that would apply to the project), and the scope of additional
 environmental review, if any, that it may require in connection with any such decision(s),
 consistent with its existing contractual obligations.

27 Whether further environmental review may be required in the future need not (and cannot)
 28 be decided now. This issue is not ripe for adjudication as there is no allegation about an active
 case or controversy, and there cannot be, regarding a final agency action (apart from actions
 which are time barred), and such final action is a fundamental prerequisite of ripeness.

1 A petitioner seeking a writ of *administrative* mandate must challenge “the validity of any
2 final administrative order or decision made as the result of a proceeding in which by law a
3 hearing is required to be given, evidence is required to be taken, and discretion in the
4 determination of facts vested” in the administrative agency. (Code Civ. Proc. § 1094.5(a); see
5 also *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 141
6 (applying section 1094.5 review in a CEQA case challenging the issuance of a use permit).)

7 Here, Petitioners have not pleaded either the traditional or administrative writ of mandate
8 requirements. First, as discussed above, there is not presently a duty for the City to conduct
9 environmental review. Nor do Petitioners have a clear, present and beneficial right to the
10 performance of such environmental review. Thus, no claim for a traditional writ has been stated.

11 Second, as discussed above, Petitioners have not identified any project approval that they
12 challenge, let alone that they could timely challenge. Nor have they identified any basis on which
13 a petition for administrative mandate could be used to decide the merits of a hypothetical, future
14 administrative order. Thus, no claim for an administrative writ has been stated.⁹

15 3. The Petition Fails to State a Ripe Controversy.

16 a. The Courts Do Not Issue Advisory Opinions re: Potential Disputes.

17 “California courts will decide only justiciable controversies.” (*Wilson & Wilson v. City*
18 *Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) The doctrine of justiciability,
19 which includes “ripeness” and “actual controversy” requirements, prevents courts from issuing
20 advisory opinions. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158,
21 170-71.) As the Supreme Court explained ripeness:

22 It is rooted in the fundamental concept that the proper role of the judiciary
23 does not extend to the resolution of abstract differences of legal opinion.
24 It is in part designed to regulate the workload of courts by preventing
judicial consideration of lawsuits that seek only to obtain general
guidance, rather than to resolve specific legal disputes. However,

25 ⁹ Note also that where there is an unresolved administrative dispute percolating at the
26 administrative level, the courts will not rule on a writ of mandate claim (traditional or
27 administrative). Rather, the courts only decide such disputes when a party files a timely petition
28 challenging final agency action. (*Bollengier v. Doctors Medical Center* (1990) 222 Cal.App.3d
1115, 1124-25, 1131 (physician’s petition for reinstatement to resume medical practice rejected
because the administrative process had not been completed).)

1 [[justiciability and]] the ripeness doctrine [are] primarily bottomed on the
 2 recognition that judicial decision-making is best conducted in the context
 3 of an actual set of facts so that the issues will be framed with sufficient
 definiteness to enable the court to make a decree finally disposing of the
 controversy.

4 (*Id.* at 170.)

5 This doctrine applies irrespective of the form of the action (e.g., a petition for a writ of
 6 mandate or claim for declaratory or injunctive relief). (*Id.* at 169-72.) Thus, all claims must
 7 present a ripe controversy. The Petition does not.

8 To be ripe, a controversy “must be definite and concrete, touching the legal relations of
 9 parties having adverse legal interests. It must be a real and substantial controversy admitting of
 10 specific relief through a decree of a conclusive character, as distinguished from an opinion
 11 advising what the law would be upon a hypothetical state of facts.” (*Pacific Legal Foundation*,
 12 33 Cal.3d at 170-71, citations omitted.) A difference of opinion regarding what the law requires a
 13 public agency to do in a developing dispute is insufficient to satisfy the ripeness requirement.
 14 (See *Id.* at 173.)

15 The courts use a two-pronged test to determine ripeness: (1) whether the dispute is
 16 sufficiently concrete; and (2) whether the parties will suffer hardship if judicial consideration is
 17 withheld. (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 64.)

18 *Pacific Legal Foundation* demonstrates a plaintiff’s failure to satisfy each of these
 19 requirements. Pacific Legal Foundation sought to challenge the legality of guidelines adopted by
 20 the Coastal Commission that required property owners to dedicate access as a condition of
 21 approval for beachfront development. (*Pacific Legal Foundation*, 33 Cal.3d at 163, 168.) First,
 22 the dispute regarding the legality of the guidelines was not sufficiently concrete because the
 23 Coastal Commission had yet to determine the type of development allowed or actual access
 24 conditions. (*Id.* at 172.) Plaintiff improperly asked, “in essence,” for the Court “to speculate” as
 25 to the nature of the project and Commission action. (*Ibid.*)

26 Second, while the Court recognized that the guidelines might inhibit property owners’
 27 development projects, participation in the administrative process did not constitute hardship.
 28 Completion of the administrative process would provide the parties and the courts with a final

1 administrative decision upon which judicial review could properly be based. (*Id.* at 172-74; see
 2 also *City of Santa Monica*, 126 Cal.App.4th at 51-53, 64-66 (legality of a campaign finance
 3 reform initiative was not ripe because city clerk was not presently under any duty to enforce, and
 4 the plaintiff city could not show that “that the withholding of a judicial determination will result
 5 in an imminent, significant hardship,” irrespective of any disagreement about its constitutionality
 6 or “sizeable public interest”).)

7 **b. This Case Is Not Ripe.**


8 Here, there is no active dispute as to the legality of any approval. Any challenge to a
 9 previously issued approval is time barred (see Real Parties’ demurrer), and the City has yet to
 10 take action with respect to potential future approvals and the CEQA review that may be
 11 associated therewith. Accordingly, this action is not ripe.

12 **IV. CONCLUSION**

13 For the foregoing reasons, this Court should sustain the City’s demurrer without leave to
 14 amend.

15 Dated: November 9, 2015

BURKE, WILLIAMS & SORESENSEN, LLP

17 By: 
 18 Kevin D. Siegel
 19 Stephen E. Velyvis
 20 Megan A. Burke
 21 Attorneys for Respondent
 22 CITY OF OAKLAND
 23
 24
 25
 26
 27
 28

PROOF OF SERVICE

I, Celestine Seals, declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501. On November 9, 2015, I served a copy of the within document(s):

RESPONDENT CITY OF OAKLAND'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO VERIFIED PETITION FOR WRIT OF MANDATE

☒ by e-mail or electronic transmission on the following party(ies) whose email address(es) is listed below, in accordance with Code of Civil Procedure § 1010.6, and based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Stacey P. Geis / Irene V. Gutierrez
EARTHJUSTICE
50 California Street, Suite 500
San Francisco, CA 94111
Email: sgeis@earthjustice.org
igutierrez@earthjustice.org
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Jessica Yarnall Loarie
SIERRA CLUB
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San Francisco, CA 94105
Email: jessica.yarnall@sierraclub.org
Attorneys for Petitioner Sierra Club

Attorneys for Petitioners Communities for a Better Environment, Sierra Club, San Francisco Baykeeper, and Asian Pacific Environmental Network

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Attorneys for Real Parties in Interest

Attorneys for Real Parties in Interest

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 9, 2015, at Oakland, California.

Celestine Seals

EXHIBIT 9

12/01/2015 TUE 12:12 FAX 415 217 2040 EARTHJUSTICE --- Alameda Superior Court

002/008

FILED BY FAX
ALAMEDA COUNTY

December 01, 2015

CLERK OF
THE SUPERIOR COURT
 By Dolores Silva, Deputy

CASE NUMBER:
RG15788084

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10
 11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **IN AND FOR THE COUNTY OF ALAMEDA**

13 **COMMUNITIES FOR A BETTER**
ENVIRONMENT, SIERRA CLUB, SAN
 14 **FRANCISCO BAYKEEPER, and ASIAN**
PACIFIC ENVIRONMENTAL NETWORK,

15 **Petitioners;**

16 **v.**

17 **CITY OF OAKLAND, and DOES 1 through**
 18 **100, inclusive,**

19 **Respondents.**

20 **PROLOGIS CCIG OAKLAND GLOBAL, LLC;**
TERMINAL LOGISTICS SOLUTIONS, LLC;
 21 **OAKLAND BULK AND OVERSIZED**
 22 **TERMINAL, LLC and DOES 101 through 199,**
inclusive,

23 **Real Parties in Interest.**

Civ. No. RG15788084

JOINT STIPULATION
REGARDING VOLUNTARY
DISMISSAL OF ACTION

ASSIGNED FOR ALL PURPOSES TO
 JUDGE EVILIO GRILLO
 DEPARTMENT 14

24 **WHEREAS, Petitioners Communities for a Better Environment, Sierra Club, San Francisco**
 25 **Baykeeper, and Asian Pacific Environmental Network ("Petitioners") filed a verified petition for**
 26 **writ of mandate against Respondent the City of Oakland ("Respondent") and Real Parties in Interest**
 27 **Prologis CCIG Oakland Global, LLC, Terminal Logistics Solutions, LLC, and Oakland Bulk and**
 28

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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA

13 COMMUNITIES FOR A BETTER
14 ENVIRONMENT, SIERRA CLUB, SAN
15 FRANCISCO BAYKEEPER, and ASIAN
16 PACIFIC ENVIRONMENTAL NETWORK,

17 Petitioners,

18 v.

19 CITY OF OAKLAND, and DOES 1 through
20 100, inclusive,

21 Respondents.

22 PROLOGIS CCIG OAKLAND GLOBAL, LLC;
23 TERMINAL LOGISTICS SOLUTIONS, LLC;
24 OAKLAND BULK AND OVERSIZED
25 TERMINAL, LLC and DOES 101 through 199,
26 inclusive,

27 Real Parties In Interest.
28

Civ. No. RG15788084

**JOINT STIPULATION
REGARDING VOLUNTARY
DISMISSAL OF ACTION**

ASSIGNED FOR ALL PURPOSES TO
JUDGE EVELIO GRILLO
DEPARTMENT 14

WHEREAS, Petitioners Communities for a Better Environment, Sierra Club, San Francisco Baykeeper, and Asian Pacific Environmental Network ("Petitioners") filed a verified petition for writ of mandate against Respondent the City of Oakland ("Respondent") and Real Parties in Interest Prologis CCIG Oakland Global, LLC, Terminal Logistics Solutions, LLC, and Oakland Bulk and

Oversized Terminal, LLC ("Real Parties") on October 2, 2015;

WHEREAS, Respondent and some of the Real Parties filed demurrers on November 9, 2015;

WHEREAS, Petitioners contend that they learned of circumstances and information of which they were previously unaware from Respondent's demurrer papers; and in light of this, Petitioners wish to exercise their right to voluntarily dismiss this action without prejudice as provided by Code of Civil Procedure section 581(b), and;

THEREFORE, Petitioners, Respondent, and Real Parties agree to the following:

1. That the pending action shall be dismissed without prejudice;
2. That Petitioners waive any claim for costs or attorneys fees against Respondent and/or Real Parties, and Respondent and Real Parties waive any claim for costs, attorneys fees, or sanctions against Petitioners.

Dated: NOVEMBER 24, 2015


Irene V. Gutierrez, Earthjustice
Attorney for Petitioners

Dated: _____, 2015

Jessica Yarnall Loarie, Sierra Club
Attorney for Sierra Club

Dated: _____, 2015

Kevin D. Siegel, Burke, Williams & Sorensen
Attorney for Respondent City of Oakland

Dated: _____, 2015

Michael H. Zischke, Cox, Castle & Nicholson
Attorney for Real Parties in Interest
Prologis CCIG Oakland Global,
Oakland Bulk and Oversized Terminal

Dated: _____, 2015

Andrew A. Bassak, Manatt, Phelps & Phillips
Attorney for Real Party in Interest,
Terminal Logistics Solutions

1 Oversized Terminal, LLC ("Real Parties") on October 2, 2015;

2 WHEREAS, Respondent and some of the Real Parties filed demurrers on November 9, 2015;

3 WHEREAS, Petitioners contend that they learned of circumstances and information of which
4 they were previously unaware from Respondent's demurrer papers; and in light of this, Petitioners
5 wish to exercise their right to voluntarily dismiss this action without prejudice as provided by Code
6 of Civil Procedure section 581(b), and;

7 THEREFORE, Petitioners, Respondent, and Real Parties agree to the following:

- 8 1. That the pending action shall be dismissed without prejudice;
- 9 2. That Petitioners waive any claim for costs or attorneys fees against Respondent and/or Real
10 Parties, and Respondent and Real Parties waive any claim for costs, attorneys fees, or
11 sanctions against Petitioners.

12
13 Dated: _____, 2015

Irene V. Gutierrez, Earthjustice
Attorney for Petitioners

14
15
16 Dated: November 24, 2015


Jessica Yarnall Loarie, Sierra Club
Attorney for Sierra Club

17
18
19 Dated: _____, 2015

Kevin D. Siegel, Burke, Williams & Sorensen
Attorney for Respondent City of Oakland

20
21
22 Dated: _____, 2015

Michael H. Zischke, Cox, Castle & Nicholson
Attorney for Real Parties in Interest
Prologis CCIG Oakland Global,
Oakland Bulk and Oversized Terminal

23
24
25
26 Dated: _____, 2015

Andrew A. Bassak, Manatt, Phelps & Phillips
Attorney for Real Party in Interest,
Terminal Logistics Solutions

1 Oversized Terminal, LLC ("Real Parties") on October 22, 2015;

2 WHEREAS, Respondent and some of the Real Parties filed demurrers on November 9, 2015;

3 WHEREAS, Petitioners contend that the alleged facts and circumstances and information of which
4 they were previously unaware from Respondent's documents, papers; and in light of this, Petitioners
5 wish to exercise their right to voluntarily dismiss this action without prejudice as provided by Code
6 of Civil Procedure section 58 (b) and;

7 THEREFORE, Petitioners, Respondent, and Real Parties agree to the following:

- 8 1. That the pending action shall be dismissed without prejudice;
- 9 2. That Petitioners waive any claim for costs or attorneys fees against Respondent and/or Real
10 Parties; and Respondent and Real Parties waive any claim for costs, attorneys fees, or
11 sanctions against Petitioners.

12
13 Dated: _____, 2015

Irene V. Gutierrez, Earthjustice
Attorney for Petitioners

14
15
16 Dated: _____, 2015

Jessica Yarnall Loarie, Sierra Club
Attorney for Sierra Club

17
18
19 Dated: Nov. 24, 2015

Kevin D. Siegel, Burke, Williams & Sorensen
Attorney for Respondent City of Oakland

20
21
22 Dated: Nov. 23, 2015

Michael H. Winkler, Cox, Castle & Nicholson
Attorneys for Real Parties in Interest
Prologis CCIG, Oakland Global,
Oakland Bulk and Oversized Terminal

23
24
25
26 Dated: Nov. 23, 2015

Andrew A. Bassak, Manatt, Phelps & Phillips
Attorney for Real Party in Interest,
Terminal Logistics Solutions

PROOF OF SERVICE

I am a citizen of the United States of America and a resident of the City and County of San Francisco; I am over the age of 18 years and not a party to the within entitled action; my business address is 50 California Street, Suite 500, San Francisco, California.

I hereby certify that on November 25, 2015, I served by Electronic Mail one true copy of the following:

- Joint Stipulation Regarding Voluntary Dismissal of Action; and
- [Proposed] Order on Joint Stipulation Regarding Voluntary Dismissal of Action

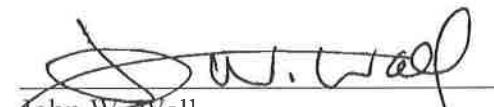
on the parties listed below:

Kevin D. Siegel
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Attorney for City of Oakland

Michael H. Zischke
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Attorney for Oakland Bulk and Oversized Terminal, LLC, and
Prologis CCIG Oakland Global, LLC

Andrew A. Bassak
ABassak@manatt.com
Attorney for Terminal Logistics Solutions, LLC

I certify under penalty of perjury that the foregoing is true and correct. Executed on November 25, 2015 in San Francisco, California.


John W. Wall

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13 COMMUNITIES FOR A BETTER
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15 FRANCISCO BAYKEEPER, and ASIAN
16 PACIFIC ENVIRONMENTAL NETWORK,

17 Petitioners,

18 v.

19 CITY OF OAKLAND, and DOES 1 through
20 100, inclusive,

21 Respondents.

22 PROLOGIS CCIG OAKLAND GLOBAL, LLC;
23 TERMINAL LOGISTICS SOLUTIONS, LLC;
24 OAKLAND BULK AND OVERSIZED
25 TERMINAL, LLC and DOES 101 through 199,
26 inclusive,

27 Real Parties In Interest.
28

Civ. No. RG15788084

**[PROPOSED] ORDER ON
JOINT STIPULATION
REGARDING VOLUNTARY
DISMISSAL OF ACTION**

ASSIGNED FOR ALL PURPOSES TO
JUDGE EVELIO GRILLO
DEPARTMENT 14

1 Pursuant to the joint stipulation filed by Petitioners Communities for a Better Environment,
2 Sierra Club, San Francisco Baykeeper, and Asian Pacific Environmental Network (“Petitioners”),
3 Respondent the City of Oakland (“Respondent”) and Real Parties in Interest Prologis CCIG Oakland
4 Global, LLC, Terminal Logistics Solutions, LLC, and Oakland Bulk and Oversized Terminal, LLC
5 (“Real Parties”) on November 25, 2015, it is hereby ordered:

- 6 1. That the pending action shall be dismissed without prejudice;
- 7 2. That Petitioners waive any claim for costs or attorneys’ fees against Respondent
8 and/or Real Parties, and Respondent and Real Parties waive any claim for costs,
9 attorneys’ fees, or sanctions against Petitioners.

10
11 **IT IS SO ORDERED.**

12
13 Dated:

14 Judge Evelio Grillo

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Attorneys for Plaintiff

Oakland Bulk & Oversized Terminal, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND BULK & OVERSIZED
TERMINAL, LLC

Plaintiff,

vs.

CITY OF OAKLAND,

Defendant.

CASE NO. 16-CV-7014

COMPLAINT

Plaintiff Oakland Bulk & Oversized Terminal, LLC (“OBOT” or “Plaintiff”) alleges as follows:

NATURE OF THE ACTION

1
2 1. Plaintiff OBOT brings this action to correct the Oakland City Council's
3 unconstitutional abuse of its power.

4 2. OBOT seeks declaratory and injunctive relief against the enforcement
5 of Oakland Ordinance No. 13385 (the "Ordinance") and Resolution No. 86234 (the
6 "Resolution"), which prohibit the transportation and e'xport of coal and petroleum
7 coke ("petcoke") to and through OBOT's rail and marine terminal currently in
8 development on city land at the port of Oakland. The Ordinance and Resolution are
9 unconstitutional under the Commerce Clause of the United States Constitution and
10 preempted by United States statutes, including the Interstate Commerce
11 Commission Termination Act, the Hazardous Materials Transportation Act, and the
12 Shipping Act of 1984.

13 3. In agreements including a Development Agreement dated July 16,
14 2013, Oakland granted OBOT the right and obligation to re-develop land at the
15 former Oakland Army Base. This includes the right to develop a rail and marine
16 terminal on that portion of the former Oakland Army Base commonly known as the
17 West Gateway (the "Terminal"). The Terminal would transfer shipments of bulk
18 commodities from rail carriers to ships for export to foreign countries through the
19 deep water port at the former Oakland Army Base. Bulk commodities are non-
20
21
22
23
24

1 containerized materials such as coal, iron ore, soda ash, copper, grain, limestone,
2 petroleum, cement and gravel.¹

3 4. Bulk commodities will be delivered to the Port of Oakland rail yard by
4 Class I rail carriers. To carry the bulk commodities from the rail yard to the
5 Terminal, OBOT is constructing a rail line and will operate a rail carrier. This rail
6 carrier is known as Oakland Global Rail Enterprise, LLC (“OGRE”), an affiliate of
7 OBOT.

8 5. OBOT is currently negotiating with Terminals and Logistics Solutions,
9 LLC (“TLS”) with respect to the financing, construction, and operation of the
10 Terminal. The TLS transaction would result in transportation of various bulk
11 commodities to and through the Terminal. One bulk commodity that TLS may
12 handle is coal, which would be shipped by rail from Utah to the Terminal for export
13 by ship.

14 6. As set forth more fully herein, coal and petcoke provide a substantial
15 amount of this nation’s energy needs, are transported by rail throughout the United
16 States and are exported in large quantities to other countries.

17 7. In recent years, environmental groups have increased their opposition
18 to coal and petcoke because of their impact on global climate change when burned
19 for fuel. The Terminal will not burn coal; rather, coal will be transported to the
20 Terminal by rail and loaded onto ships for export without any burning of coal.

21 ¹ The Cambridge Business English Dictionary defines “bulk goods” as “goods such as coal,
22 grains, oil, or chemicals that are not packaged in any type of container and are stored, transported,
23 and sold in large quantities.” (<http://dictionary.cambridge.org/us/dictionary/english/bulk-goods>,
24 last visited December 7, 2016; *see also* <http://dictionary.reference.com/browse/bulk>, last visited
December 7, 2016 (“bulk” defined as “goods or cargo not in packages or boxes, usually
transported in large volume, as grain, coal, or petroleum”).

1 Nevertheless, facing pressures from environmental interest groups opposed to the
2 use of coal globally, the Oakland City Council embarked on a campaign to ban the
3 transport and export of coal and petcoke to and through Oakland—and specifically
4 at the Terminal.

5 8. The campaign culminated in 2016, with Oakland’s passing of the
6 Ordinance and Resolution. The Ordinance and Resolution impose a complete ban
7 on the transportation and export of coal and petcoke to and through the Terminal.

8 9. The purpose and effect of the Ordinance and Resolution are to regulate
9 the transport and export of coal and petcoke.

10 10. The justifications for the ban imposed by the Ordinance and Resolution
11 and the purported benefits of the Ordinance and Resolution are illusory. The
12 Ordinance and Resolution impose a burden on interstate and foreign commerce, are
13 clearly excessive in relation to the purported local benefits, are not based on
14 evidence of a substantial danger to residents of Oakland and neighbors or users of
15 the Terminal, and there are less restrictive measures that can and do control the
16 purported health effects that are the purported basis of the Ordinance and
17 Resolution.

18 11. Accordingly, the Ordinance and Resolution violate the Commerce
19 Clause of the United States Constitution, and are preempted by federal statutes
20 including the Interstate Commerce Commission Termination Act, which vests the
21 exclusive power to regulate rail transportation in the Surface and Transportation
22 Board of the United States (not the City of Oakland); the Hazardous Materials
23 Transportation Act, which vests the United States Secretary of Transportation (not
24

1 the City of Oakland) with the authority to determine what materials warrant
2 “hazardous” designations and restrictions or prohibitions in interstate and intrastate
3 transportation; and the Shipping Act of 1984, which prohibits discrimination in
4 shipping of the kind required by the Ordinance. Because the Ordinance and
5 Resolution violate these federal laws, as described below the Ordinance and
6 Resolution also breach the Development Agreement.

7 12. The passage of the Ordinance and Resolution have materially and
8 substantially harmed OBOT, including by diminishing the value of OBOT’s rights
9 pursuant to the Development Agreement and diminishing the value of its investment
10 in the West Gateway, imposing on OBOT substantial out-of-pocket costs to mitigate
11 the harm from Oakland’s unconstitutional exercise of its power, and interfering with
12 OBOT’s ability to attract partners and investments for the West Gateway project.

13 13. OBOT thus respectfully seeks declaratory, injunctive, and any other
14 appropriate relief against the application of the Ordinance and Resolution to the
15 construction and operation of the Terminal.

16 **PARTIES**

17 14. Plaintiff OBOT is a California limited liability company with a
18 principal place of business located at 300 Frank H. Ogawa Plaza, Suite 340,
19 Oakland, CA 94612.

20 15. Defendant City of Oakland is a public entity and California charter city
21 located in Alameda County, California (hereinafter, “Oakland” or the “City”).
22
23
24

JURISDICTION AND VENUE

16. This Court has subject-matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331 (federal question) because Claim 1 of OBOT's complaint asks this Court, pursuant to 42 U.S.C. § 1983, to interpret and to apply the Commerce Clause, and Claim 2 of OBOT's complaint asks this Court, pursuant to 42 U.S.C. § 1983, to interpret and to apply the ICCTA, Hazardous Materials Transportation Act and Shipping Act of 1984.

17. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the parallel claim for breach of contract asserted in Claim 3 of OBOT's complaint because it arises out of the same case or controversy as Claims 1 and 2.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because Defendant City of Oakland is located within the District. This Court is also a proper venue pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in the District, where a substantial part of the property affected by the regulations at issue is also located.

19. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory judgment), 28 U.S.C. § 1651(a) (injunctive relief), and 42 U.S.C. § 1983 (declaratory and injunctive relief available for Commerce Clause violations).

INTRADISTRICT ASSIGNMENT

20. Pursuant to Civil L.R. 3-5(b) and Civil L.R. 3-2(c)-(d), there is a basis for assigning this civil action to the San Francisco Division or Oakland Division, as a substantial part of the events giving rise to the claims occurred in Alameda County.

1 23. In 2008, after numerous proposed projects for redevelopment of the
2 Oakland Army Base failed, the City issued a Request for Qualifications seeking
3 plans from private developers to “transform the [Gateway Development Area] into a
4 mixed use commercial and/or industrial development”.

5 24. Thirteen developers submitted proposals, including California Capital
6 & Investment Group, Inc. (“CCIG”). CCIG is the sole member of OBOT.

7 25. At all times, CCIG and then OBOT clearly communicated to the City,
8 including in project documentation, its plan to build a rail and marine terminal for
9 bulk and oversized cargo at the West Gateway. The City was aware that coal was
10 one of the bulk commodities that could be transported through the Terminal.

11 26. For example, in October 2011 a potential sublessee of the Terminal,
12 Kinder Morgan, gave a presentation to City officials that discussed how coal
13 constituted 34% of the “bulk tonnage” Kinder Morgan shipped. In June 2012,
14 CCIG provided to city officials a video that included a depiction of coal shipments
15 from a similar terminal in Long Beach, California. In January 2013, Port of
16 Oakland officials exchanged emails about their discussion with Oakland City
17 officials regarding the possibility for coal shipments at the Oakland Army Base.
18 Finally, a May 2013 study commissioned by the Port of Oakland included coal in its
19 “suggested list of commodities” that could be shipped from the Oakland Army Base.

20 27. After dozens of duly noticed public hearings, two written agreements
21 were executed with the City: (1) the Lease Disposition and Development
22 Agreement (as amended, the “LDDA”) and (2) the Development Agreement
23
24

1 Regarding The Property And Project Known As The “Gateway
2 Development/Oakland Global”, effective July 16, 2013 (as amended, the “DA”).

3 28. The LDDA was originally entered into by the City, the Oakland
4 Redevelopment Successor Agency (“ORSA”) and Prologis CCIG Oakland Global,
5 LLC (“Prologis/CCIG”). Prologis/CCIG is a joint venture between an affiliate of
6 Prologis, Inc. and CCIG. On or about June 13, 2014, City, Prologis/CCIG and
7 OBOT entered into that certain Partial Assignment and Assumption (West Gateway)
8 of the Lease Disposition and Development Agreement (the “WGW Partial
9 Assignment”) whereby OBOT succeeded to all of Prologis/CCIG’s rights and
10 obligations under the LDDA with respect to the West Gateway.

11 29. The DA was originally entered into between the City and
12 Prologis/CCIG. Pursuant to Section 10.1 of the DA, Prologis/CCIG’s rights and
13 obligations under the DA with respect to the West Gateway were automatically
14 assigned to OBOT upon the execution of the WGW Partial Assignment by the City,
15 Prologis/CCIG and OBOT confirming OBOT as a permitted assignee under the
16 LDDA with respect to the West Gateway.

17 30. Neither the LDDA nor the DA impose any restrictions preventing the
18 transport of coal or petcoke through the Terminal. Neither agreement limit the type
19 of bulk commodities that could be exported from the Terminal. As an Assistant
20 City Administrator stated in a February 3, 2016 “Status Report On Coal”:

21 In 2013, the City Council adopted a Development Agreement (DA) for the
22 Bulk Commodities Terminal at the Army Base West Gateway Parcel. This
23 agreement vested rights to the developer (CCIG) to operate the facility
24

1 under the current set of laws at the time of adoption, with limited
2 exceptions. *No specific restriction or prohibition on coal was made part of*
3 *that agreement.* There is a narrow exception related to health and/or safety
4 (Section 3.4.2 of the DA). (emphasis added).

5 31. In particular, Section 3.4 of the DA specified that only “Existing City
6 Regulations” as of the adoption of the DA would “govern the development of the
7 Project and all Subsequent Approvals with respect to the development of the Project
8 on the Project Site”. The only exception to this express contractual promise is
9 Section 3.4.2 of the DA: the City could apply health and safety regulations adopted
10 after July 16, 2013, to the Terminal only if (a) the application of any such health and
11 safety regulation is “otherwise permissible pursuant to Laws”—“Laws” being
12 defined to include the “Constitution of the United States, and any codes, statutes,
13 regulations, or executive mandates thereunder”; and (b) the “City determines based
14 on substantial evidence and after a public hearing that a failure to do so would place
15 existing or future occupants or users of the Project, adjacent neighbors, or any
16 portion thereof, or all of them, in a condition substantially dangerous to their health
17 or safety”.²

18 32. Following the execution of the DA, OBOT invested years of effort and
19 millions of dollars in planning the development of the Terminal.

20 33. For example, OBOT has spent millions of dollars and thousands of
21 man-hours removing existing structures at the project site, building the
22

23 ² Certain other narrow exceptions exist which allow the City to apply new regulations to the
24 project, but none of those exceptions applies here.

1 infrastructure required to support the anticipated Terminal (including the rail line to
2 the Terminal), and implementing environmental safeguards for use both during
3 construction and future operations at the Terminal. To date, OBOT and its affiliates
4 have invested well in excess of \$10 million on these development efforts.

5 34. As part of the development process, OBOT began to search for a
6 company to construct and operate the Terminal. In the spring of 2014, OBOT
7 entered negotiations with TLS.

8 35. The negotiations eventually resulted in a November 2014 Exclusive
9 Negotiation Agreement and Sublease Option between OBOT and TLS (the
10 “Sublease Option”). The Sublease Option granted TLS an exclusive option to
11 sublease and operate the Terminal for a sixty-six (66) year period. Consistent with
12 the City-approved DA and industry practice for such facilities, the Sublease Option
13 did not restrict the shipment of coal or any other commodity to and through the
14 Terminal.

15 36. Beginning in 2014, facing political pressure including from
16 environmental groups Oakland City Council members decided to prohibit the
17 transportation and shipment of coal and petcoke to and through the Terminal before
18 reviewing the evidence of its local health and safety impacts—or lack thereof—or
19 holding a genuine public hearing. This is reflected in statements and events that
20 took place after the execution of the DA and before the purported public hearings
21 held in September 2015, and June 2016, including but not limited to the following:

- 22 a. On June 17, 2014—two years before the Ordinance and Resolution of
23 2016 were adopted—the Oakland City Council unanimously passed
24

1 Resolution No. 85054, a “Resolution to Oppose Transportation of
2 Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, and
3 Petroleum Coke, Along California Waterways, through Densely Populated
4 areas, through the City of Oakland”. This resolution, which recited the
5 Council’s opposition to the transportation of commodities including coal
6 and petcoke through Oakland was introduced by Councilmembers Kalb,
7 Gibson, McElhaney and Kaplan. Councilmembers Brooks, Gallo, Gibson,
8 McElhaney, Kalb, Kaplan, Reid, Schaaf and then-President Kernighan
9 voted in favor of the resolution. On information and belief, there was not
10 even the semblance of study or a public hearing before this resolution was
11 passed.

- 12 b. On or about May 4, 2015—one year before the Ordinance and Resolution
13 of 2016 were adopted—Oakland Councilwoman Lynette Gibson
14 McElhaney released a signed press release entitled “OAKLAND SAYS
15 ‘NO!’ TO COAL SHIPMENTS AT THE OAKLAND ARMY BASE”.
16 Therein, Councilwoman McElhaney stated: “Lynette Gibson McElhaney,
17 President of the Oakland City Council, is unequivocal in her opposition to
18 coal being exported from City-owned lands, ‘. . . [I]t is not the type of
19 economic development that we want - no thank you!’” Councilwoman
20 McElhaney continued: “The Oakland City Council, and the Port Board of
21 Commissioners have already taken stances against coal exports,
22 specifically: • In February of 2014, the Board of Port Commissioners
23 rejected a proposal to ship coal from one of their terminals. • In June of
24

2014, Councilmember McElhaney and her colleagues passed a resolution opposing the transport of coal, oil, petcoke (a byproduct of the oil refining process) and other hazardous materials by railways and waterways within the City”.

- c. On or about May 14, 2015, Councilmember Abel J. Guillen posted on social media (under his Instagram moniker, “babocinco”) a photograph of a large banner stating: “NO COAL IN OAKLAND” with the caption: “No Coal in #Oakland! #savetheplanet #savetheearth #environment1st #environmentaljustice”.



- d. On May 11, 2015, Oakland Mayor Libby Schaaf wrote to CCIG CEO, Phil Tagami: “I was extremely disappointed to once again hear Jerry Bridges [President of TLS] mention the possibility of shipping coal into Oakland at the Oakland Dialogue breakfast. Stop it immediately. You have been awarded the privilege and opportunity of a lifetime to develop this unique piece of land. You must respect the owner and public’s decree that we

1 will not have coal shipped through our city. . . . Please declare definitively
2 that you will respect the policy of the City of Oakland and you will not
3 allow coal to come through Oakland. If you don't do that soon, we will all
4 have to expend time and energy in a public battle”

5
6 37. After the foregoing events and statements, the City Council began the
7 process of holding a series of sham public hearings on an ordinance to ban coal and
8 petcoke from Oakland. The first such hearing took place in September, 2015.

9 38. Among the parties who contributed to the September 2015 hearing was
10 the Bay Area Air Quality Management District (“BAAQMD”). BAAQMD
11 regulates non-vehicular sources of emissions into the air in the Bay Area. At the
12 September 2015 hearing, BAAQMD’s representative did not support a ban on coal
13 shipments but rather adopted a “neutral position”.

14 39. BAAQMD encouraged the City Council “to implement all feasible
15 mitigations” such as covering rail cars and conveyors involved in transporting coal.
16 BAAQMD did not provide any evidence that coal or petcoke shipments posed a
17 substantial health or safety danger or that a total ban was required for health and
18 safety.

19 40. On May 3, 2016, the Oakland City Council passed a resolution
20 acknowledging that analysis and review of the potential impacts of coal and petcoke
21 required “multi-disciplined expertise” and “specialized and additional expertise”
22 that the City Council and its staff did not have.

23 41. Accordingly, the City Council retained private consultant
24 Environmental Science Associates (“ESA”) to selectively review the record

1 compiled to date and to create findings that would appear to support a finding of
2 “health and/or safety impacts” of transporting bituminous coal, fuel oils, gasoline,
3 crude oil and petcoke through the Terminal.

4 42. The retention of ESA and the subsequent public hearing to review the
5 ESA Report were a sham—an attempt by the City Council to give the appearance of
6 weighing the evidence concerning coal and petcoke, even though the City Council
7 had already decided to ban the transport of coal and petcoke through the Terminal.

8 43. As Councilmember Kalb stated at the May 3 hearing, the retention of
9 ESA was part of a “multi-pronged effort” in which ESA would work with City Staff
10 and a staff person whom Kalb had hired on a temporary basis “to get us to a place
11 hopefully by the end of June where we’d be able to take appropriate action and have
12 the ability under the rules and under the provision of the development agreement to
13 take serious action”.

14 44. Councilmember Noel Gallo was even more direct at the May 3 hearing:
15 he expressed concern that the retention of ESA would further delay the vote on
16 banning coal and said that he was “ready to vote no on the coal”.

17 45. On or about Thursday, June 23, 2016, ESA issued its “Report on the
18 Health and/or Safety Impacts Associated with the Transport, Storage, and/or
19 Handling of Coal and/or petcoke in Oakland, Including at the Proposed Oakland
20 Bulk and Oversized Terminal in the West Gateway Area of the Former Oakland
21 Army Base” (the “ESA Report”).

22 46. On Friday, June 24, 2016, the City for the first time publicly released
23 proposed drafts of the Ordinance and Resolution. At the same time the City also
24

1 released an Agenda Report prepared by City staff (the “Staff Report”) that
2 recommended the adoption of the Ordinance and Resolution and which was
3 purportedly based on an evaluation of the ESA Report completed one day earlier
4 and of public letters and opinions submitted to the City regarding coal and petcoke,
5 including other reports purporting to analyze those submissions.

6 47. On June 27, 2016, three days after the ESA Report was issued to the
7 City (including two weekend days) the City Council held a hearing and voted to ban
8 coal and petcoke in the Ordinance and Resolution. On information and belief, no
9 city councilmember fully analyzed and understood the 163 page ESA report in that
10 amount of time, and no city councilmember asked any questions of ESA at the June
11 27 hearing.

12 48. The ESA Report separated its findings with respect to the potential
13 “health effects” of coal, “safety effects” of coal and “climate effects” of coal. With
14 respect to the purported “health effects” of transporting coal, the ESA Report merely
15 concluded that the rail transportation and storage and handling of coal, taken
16 together, “**could** impact the health of adjacent neighbors from the expected increase
17 into the ambient air in the form of total suspended particulates and fine particulates
18 (TSP, PM₁₀, and PM_{2.5})” (emphasis added).

19 49. Even these speculations by ESA about what “could” happen are
20 unsupported. Nothing in the ESA Report or any other report or submission
21 purportedly evaluated by the City Council and its staff provides a basis for a ban on
22 coal or petcoke by the City of Oakland.

1 50. The ESA Report relies principally on estimates of particulate matter
2 (“PM”) emissions resulting from the transportation of coal and petcoke. PM_{10} and
3 $PM_{2.5}$ are standard metrics for measuring PM found in the air. PM is not unique to
4 coal and petcoke: a large number of other sources produce PM including, for
5 example, windblown soil, vehicle exhaust, grain storage, and woodburning
6 fireplaces.

7 51. Thus, any activity—including shipping commodities other than coal
8 or petcoke to and through the Terminal—could increase the levels of PM in the air.

9 52. Neither the ESA Report nor any other report or submission purportedly
10 evaluated by the City Council or its staff addresses whether coal and petcoke release
11 more PM than other bulk commodities that might be shipped through the Terminal.

12 53. The ESA Report divided its emission estimates between “Rail
13 Transport” (the period when the coal would be in transit in a rail car) and “OBOT
14 Operations” (the period when the coal would be unloaded, stored, transferred and
15 transloaded into ships after arriving at the Terminal). These estimates are contained
16 in Table 5.7 of the ESA Report:

TABLE 5-7
SUMMARY OF EMISSIONS ESTIMATES FROM RAIL TRANSPORT, STAGING/SPUR TRAVEL, UNLOADING, STORAGE, TRANSFER AND SHIP LOADING OF COAL AT OBOT

Fugitive Coal Dust Emissions Source	tons/yr			lbs/day		
	TSP	PM ₁₀	PM _{2.5}	TSP	PM ₁₀	PM _{2.5}
Rail Transport*						
BAAQMD	2,102	988	148	12,012	5,646	847
Oakland	82	38	6	468	220	33
So Emeryville	35	17	3	203	95	14
San Leandro	98	46	7	562	264	40
Staging at Port Railyard, Rail Spur Trip to OBOT	156	78	18	889	445	67
SUBTOTAL - Oakland	238	116	18	1,357	665	100
OBOT Operations						
Unloading	11.9	5.7	0.9	66.0	31.2	4.7
Storage	3.2	1.5	0.2	17.7	8.4	1.3
Transfer	10.4	4.9	0.7	57.6	27.2	4.1
Transloading	11.9	5.7	0.9	66.0	31.2	4.7
SUBTOTAL	37.5	17.7	2.7	207.3	98.1	14.8
PROJECT TOTAL - Oakland	276	134	21	1,564	763	115
* Uncontrolled air emissions of fugitive dust from open coal filled rail cars. .						

54. ESA's estimates of "TSP" are irrelevant for all practical purposes: TSP is not regulated, and measurements of TSP are not relied upon in assessments of air quality, not even in the ESA Report.

55. ESA's estimates of PM₁₀ and PM_{2.5} emissions from the unloading, storage, transfer and/or transloading of coal at the "OBOT Operations" were not supported by evidence.

56. The Terminal and its emission controls have not yet been fully designed, much less constructed. Accordingly, it is impossible to specify the precise amount of possible emissions that might be associated with the proposed Terminal.

57. Nonetheless, ESA did not provide a range of estimated potential emissions from the Terminal but instead purported to estimate the precise level of emissions.

1 58. ESA provided no detail or back up or any indication of the numerical
2 inputs it used to reach the values in Table 5-7.

3 59. On information and belief, no set of inputs grounded in fact would
4 support the values set forth in Table 5-7 of the ESA Report.

5 60. ESA does not appear to have taken into account in Table 5-7 the
6 emission levels of two terminals in California that transport coal or petcoke.

7 61. The terminal at the Port of Pittsburg is a multiple commodity terminal,
8 which stores and ships petcoke. ESA does not appear to have taken into account the
9 Pittsburg terminal's emission values in the values it reported in Table 5-7 of the
10 ESA Report. ESA did not explain this omission.

11 62. The terminal at the Port of Long Beach is a multiple commodity
12 terminal, which stores and ships coal and petcoke. ESA does not appear to have
13 taken into account the Long Beach terminal's emission values in the values it
14 reported in Table 5-7 of the ESA Report. ESA did not explain this omission.

15 63. Consistent with the proposed design of the Terminal, the Pittsburg
16 terminal and the Long Beach terminal are either totally enclosed or partially
17 enclosed and otherwise covered. The reported emissions for these facilities are far
18 lower than the values predicted by ESA for the Terminal.

19 64. On information and belief, the Pittsburg terminal and the Long Beach
20 terminal operate pursuant to permits from their respective Air Quality Management
21 Districts. These Districts regulate air quality pursuant to delegation from the State
22 of California.

23
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1 65. On information and belief, the Pittsburg terminal publicly reported
2 emissions of 0.1 tons a year of PM₁₀ and 0.1 tons a year of PM_{2.5}; these emissions
3 are based on a total throughput of 500,000 tons of petcoke per year.

4 66. On information and belief, the Long Beach terminal publicly reported
5 emissions of 0.8 tons per year of PM₁₀ and 0.2 tons per year of PM_{2.5}; these
6 emissions are based on a total throughput of approximately 1.7 million tons of coal
7 per year.

8 67. The emissions rates in paragraphs 65 through 66 reflect emissions rates
9 at similar enclosed and/or covered terminals, and are well below the emissions rate
10 assumed in the ESA Report.

11 68. The ESA Report does not contain any explanation about why the
12 enclosures and/or covers of the Pittsburg or Long Beach terminals would not work
13 at the Terminal. Neither the ESA Report nor any other report or submission
14 purportedly evaluated by the City Council or its staff contains any explanation about
15 why they did not assume emissions rates comparable to the Pittsburg and Long
16 Beach terminals.

17 69. The EPA has delegated certain regulatory authority regarding air
18 quality to the states. The State of California has delegated regulatory responsibility
19 for air pollution from non-vehicular sources to Air Quality Management Districts.
20 In the nine county Bay Area, this regulatory body is BAAQMD.

21 70. The ESA Report acknowledges that the “Bay Area Air Quality
22 Management District (BAAQMD)” is “the regional agency responsible for air
23 pollution control in San Francisco Air Basin (Bay Area) “
24

1 71. No BAAQMD rule or regulation requires a ban on the transportation of
2 coal or the proposed activities at the Terminal.

3 72. For any new source of emissions in the Bay Area, BAAQMD has
4 established thresholds over which it considers an increase in emissions “significant”.
5 With respect to PM₁₀, BAAQMD considers a new source of emissions significant if
6 it emits over 15 tons of PM₁₀ per year. With respect to PM_{2.5}, BAAQMD considers
7 a new source of emissions significant if it emits over 10 tons of PM_{2.5} per year.

8 73. On information and belief, the increase in PM emissions from the
9 operations at the Terminal, whether or not coal and petcoke were permitted, would
10 be approximately ten times less than what BAAQMD considers significant.

11 74. Pursuant to BAAQMD Regulations, the Terminal would be required to
12 obtain an operational permit. The permit would be conditioned on installation of
13 Best Available Control Technology (BACT). On information and belief, BACT
14 includes control measures such as enclosures, baghouses, wind screens, spillage
15 control for conveyors, and water sprays.

16 75. Storage domes and enclosed conveyors are currently used in coal and
17 petcoke facilities, including in the Bay Area. The ESA Report so states and
18 recognizes these mitigation measures would be regarded by BAAQMD as “Best
19 Available Control Technology”. ESA does not state that it took these measures into
20 account in calculating the values in Table 5-7. On information and belief, ESA did
21 not do so.

22 76. The installation of BACT will ensure that PM emissions at the
23 Terminal are negligible.
24

1 77. On or about October 5, 2015, BAAQMD wrote to the City Council:
2 “Air District staff is available to meet with City staff and assist in the evaluation of
3 Terminal Logistics Solutions’ proposed mitigation measures and discuss additional
4 measures. As Air District staff stated at the Sept. 21 hearing, potential air quality
5 emissions and impacts to public health from the proposed Project include fugitive
6 dust and equipment engine emissions. Dust emissions can be reduced through
7 aggressive containment of all aspects of material handling – rail cars, conveyers,
8 storage piles, etc.” Such containment is planned for the Terminal and related
9 activities. On information and belief, ESA did not take these containment measures
10 into account in Table 5.7 and did not address or explain why it rejected BAAQMD’s
11 views on these containment measures.

12 78. On information and belief, neither the ESA Report nor any other report
13 or submission purportedly evaluated by the City Council or its staff addresses or
14 explains why BAAQMD’s permit requirements and the installation of BACT would
15 be insufficient.

16 79. The ESA Report failed to address that the South Coast Air Quality
17 Management District (SCAQMD) adopted a regulation known as Rule 1158 at least
18 in part to regulate the Long Beach terminal. Nothing in the ESA Report or any
19 other report or submission purportedly evaluated by the City Council or its staff
20 addresses, much less establishes, that there is any substantial danger to neighbors or
21 users of the Long Beach terminal as it is operating today. Nothing in the ESA
22 Report or other evidence addresses why the Terminal, if the requirements of Rule
23
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1 1158 were applied to it, would result in any substantial danger to neighbors or users
2 of the Terminal or other residents of Oakland.

3 80. The Pittsburg and Long Beach terminals are not the only facilities in
4 California that handle coal or petcoke. As the ESA Report acknowledges, “In the
5 San Francisco Bay area all of the five refineries produce petcoke” which is a
6 “commonly exported commodity”. The ESA Report contains no indication of the
7 emissions levels from these facilities. The ESA Report contains no indication of
8 any adverse health consequences from these facilities.

9 81. As set forth herein, the City is prohibited by the United States
10 Constitution and federal law from regulating rail transportation.

11 82. Even if the City could lawfully regulate rail transportation, ESA’s
12 estimates for PM emissions from Rail Transport were explicitly based on an
13 assumption of “uncontrolled air emissions of fugitive dust from open coal filled rail
14 cars”. There was no basis for this assumption.

15 83. In fact, potential coal dust emissions from rail cars transporting coal to
16 the Terminal could be controlled by measures such as rail car covers and/or
17 surfactants (spray-on adhesive coating that is routinely employed in rail transport for
18 the purpose of preventing fugitive dust releases). ESA cited no evidence that such
19 measures would not work.

20 84. Further, on information and belief, even with respect to uncovered rail
21 cars the rate of coal dust emissions decreases rapidly as the rail car begins to travel.
22 As a result, PM emissions from a rail car travelling through Oakland would be
23 significantly less than any such emissions at the departure point.
24

1 85. On information and belief, ESA relied upon numerical values
2 concerning emission rates for uncovered rail cars at the departure point and assumed
3 that rate would be constant along the entire trip. The currently projected starting
4 point for coal shipments to the Terminal is Utah—almost a thousand miles from
5 Oakland. There was no basis for the ESA Report or any other report or submission
6 purportedly evaluated by the City Council or its staff to use emissions rates at the
7 departure point in Utah to predict emissions from trains moving in Oakland.

8 86. Once operational, commodities will arrive at the Terminal from the
9 interstate rail system as follows:

- 10 a. “Class I” rail carriers will transport commodities to the Port of Oakland
11 Rail Yard.
- 12 b. Once the commodities arrive at the Rail Yard, the Class I rail carriers
13 will transport the commodities from the Rail Yard to the Terminal via the
14 rail carrier known as OGRE.
- 15 c. The rail cars that OGRE will move from the Rail Yard to the Terminal
16 belong to the Class I rail carriers.
- 17 d. OGRE will be paid by the Class I rail carriers to move these rail cars.
- 18 e. At any time, the Class I carriers will be entitled to undertake the Rail
19 Yard to Terminal transportation directly.

20 87. Once commodities arrive at the Terminal, they will be transloaded from
21 the rail carrier through the Terminal to ships for shipment to other states or export to
22 foreign countries. Transloading is an integral part of the interstate rail system. It
23 includes handling the commodities, loading and unloading them, possibly storing
24 them temporarily, and transferring them from the rail carrier through the terminal to
the ships.

1 88. With respect to the “safety effects” of coal and petcoke, the ESA
2 Report asserted merely that fires have occurred at coal piles and in rail cars of
3 unspecified contents in unspecified conditions, and that coal fires can present a
4 danger to persons in close proximity to them, such as firefighters. The ESA Report
5 identified no evidence, however, that a coal fire is likely to occur at the Terminal or
6 in rail cars carrying coal to or through the Terminal in Oakland.

7 89. The ESA Report provided no evidence of a coal fire ever occurring at
8 any of the coal rail terminals cited in the Report.

9 90. In particular, neither the ESA Report nor any other report or
10 submission purportedly evaluated by the City Council or its staff contains any
11 evidence that there has been a fire at the Long Beach Terminal or the Pittsburg
12 terminal, which use covers and/or enclosures.

13 91. ESA did not consider any evidence regarding mitigation measures for
14 fire safety.

15 92. With respect to the climate effects of coal and petcoke, the ESA Report
16 commented on greenhouse gases solely because it was mentioned by public
17 commenters during the public hearing process: “Because numerous public
18 commenters noted the contribution of the greenhouse gas emissions of coal when
19 combusted by the end user overseas, this study also includes a review of those
20 comments”.

21 93. The ESA Report states that air pollutants emitted from the use of coal
22 and petcoke overseas may be carried over the ocean to Oakland. On information
23
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1 and belief, because of the relevant meteorological conditions, there will be no or
2 negligible air quality impact to Oakland from the burning of coal overseas.

3 94. The ESA Report states that the coal shipped through the Terminal and
4 combusted overseas could increase greenhouse gas levels globally. On information
5 and belief, the size of any increase in greenhouse gasses from the use of the
6 quantities of coal that would be exported through the Terminal would be on the
7 order of 0.01 percent (one one-hundredth of one percent) of the global total.

8 95. The ESA Report concludes that the resulting incremental rise in sea
9 level “would be experienced locally in Oakland”. Neither the ESA Report nor any
10 other report or submission purportedly evaluated by the City Council or its staff
11 contain any substantial evidence to support this conclusion. The size of the increase
12 in global greenhouse gas levels, as alleged in the previous paragraph, would not be
13 perceptible in Oakland.

14 96. Apart from the ESA Report, the Staff Report (on which the Ordinance
15 and Resolution purport to rely) purports to have evaluated a report by Zoe Chafe
16 regarding the transportation of coal and petcoke (the “Chafe Report”).

17 97. In or around November 2015, City Councilmember Kalb issued a
18 solicitation and proposed scope of work entitled “Evaluation of Health and Safety
19 Impacts of the Proposed Bulk Coal Terminal on the Former Oakland Army Base
20 Adjacent to the Port of Oakland”.

21 98. Councilmember Kalb’s solicitation resulted in the retention of Zoe
22 Chafe to prepare a report that purported to review the evidence regarding coal and
23 petcoke.
24

1 99. As the November 2015 solicitation suggested, the retention of Chafe
2 was an attempt to by the City Council to give the appearance of weighing the
3 evidence concerning coal and petcoke, even though the City Council had already
4 decided to ban the transport of coal and petcoke to and through the Terminal
5 irrespective of the evidence.

6 100. That solicitation made clear that a balanced and objective review of the
7 evidence was not expected. The solicitation stated that the person to be retained
8 would review the record from the September 2015 hearing on coal and petcoke and
9 produce a document that would contain, if applicable, “a series of findings that can
10 be used to support the application of public health or safety regulations pursuant to
11 section 3.4.2 of the development agreement”.

12 101. While Chafe was preparing her Report, and shortly before the Oakland
13 City Council passed the resolution to retain ESA on May 3, 2016, Vice Mayor and
14 City Councilmember Anne Campbell Washington received an email from her chief
15 of staff that provided a path to the adoption of the Ordinance and Resolution.
16 Among other things, the email stated that “The only way to vote on June 21 [to ban
17 coal and petcoke] is if ESA process is dispensed altogether. We can rely on the
18 report that Zoe Chafe is preparing and that independent public health panel will
19 prepare”.

20 102. The email to Councilmember Campbell was written on April 30, 2016;
21 the Chafe Report was not completed until June 22, 2016. The fact that the City
22 Council and its staff believed that it could “rely” on the Chafe Report before it was
23 completed reflects that the Report was not an objective review of the evidence.
24

1 103. The Chafe Report is not supported by substantial evidence.

2 104. For example, with respect to purported health effects, the Chafe Report
3 states that the Terminal presents a health risk because “[t]here is no safe level of
4 exposure to PM_{2.5}” and the Terminal will release PM_{2.5}. As set forth in paragraph
5 51 above, **any** operations at the Terminal or West Gateway would and currently do
6 release PM_{2.5}, whether or not involving coal or petcoke.

7 105. The Chafe Report states that emissions from the burning of coal may
8 cause cancer. As set forth in paragraph 7 above, there will be no burning of coal in
9 connection with the Terminal.

10 106. Chafe’s assertion that coal fires may expose people to carcinogenic
11 toxins is based on studies regarding prolonged exposure to fumes from cooking food
12 using solid fuels such as coal. These conditions are inapplicable to people in the
13 vicinity of the Terminal, even assuming a coal fire occurred at some point.

14 107. Chafe’s assertions regarding the health effects of coal on workers at the
15 Terminal assume that conditions at the Terminal would be the same as those in a
16 coal mine. There is no basis for this incorrect assumption.

17 108. The conditions at the Terminal, like the conditions at the Pittsburg and
18 Long Beach terminals, would not be similar to coal mines in any material respect.

19 109. Workers at the Terminal will be equipped with protective equipment as
20 required by the National Institute for Occupational Safety and Health including
21 personal respiratory protection. Chafe assumes, without evidentiary support, that
22 the protective equipment would not work. Neither the Chafe Report nor any other
23 report or submission purportedly evaluated by the City Council or its staff cites any
24

1 evidence that workers at the Long Beach and Pittsburg terminals do not use
2 protective equipment or are otherwise exposed to health risks.

3 110. Chafe asserts that PM will be released from the Terminal by “Rail cars
4 being transported through Oakland”, “Rail cars in terminal (bottom-dump)”, “Open
5 rail cars” and “Open storage areas”.

6 111. There will be no “Open rail cars” and no “Open storage areas” at the
7 Terminal, and any dust emitted from the “bottom-dump” railcars would be
8 contained within the fully enclosed Terminal.

9 112. With respect to coal fires and explosions, Chafe asserts that “even if
10 safety protocols are followed” the transportation of coal to and through the Terminal
11 presents a “substantial risk” of “substantial damage from fires and explosions”.
12 Chafe did not cite any evidence regarding mitigation measures for fire safety or
13 attempt to explain why those mitigation measures would not work.

14 113. In particular, the Chafe Report contains no evidence that there has been
15 a fire at the Long Beach or Pittsburg terminals, which use covers and/or enclosures
16 and employ fire mitigation measures.

17 114. The assertion in the Chafe Report and in other reports and submissions
18 purportedly evaluated by the City Council or its staff that coal poses a substantial
19 risk of fire/explosion during transport, including by spontaneous combustion,
20 despite all safety precautions, contradicts the Secretary of Transportation’s
21 designation of coal as safe for transportation.

1 115. Chafe’s conclusions regarding the global climate effects of coal
2 exported from the Terminal are not supported by evidence for the same reasons
3 alleged in paragraphs 94 through 95 above.

4 116. The purpose, intent and effect of the Ordinance and Resolution is to
5 regulate the transportation by rail and by ship of coal and petcoke.

6 117. By completely banning coal and petcoke activities at the Terminal, the
7 Ordinance and Resolution make it impossible to ship or transport coal to or through
8 Oakland for export.

9 118. The fact that the Oakland City Council’s intent was to prohibit rail
10 transportation and shipping of coal and petcoke is reflected in the ESA Report and
11 other reports and submissions purportedly evaluated by the City Council or its staff.
12 In particular, ESA’s estimated emissions of both PM₁₀ and PM_{2.5} from the “OBOT
13 Operations” are only 13% of ESA’s estimated total emissions for “all activities
14 associated with OBOT for the export of coal” (*i.e.*, from “Rail Transport” and
15 “OBOT Operations” combined). Other reports purportedly evaluated by the City
16 Council or its staff similarly relied principally upon the estimates of PM emissions
17 from coal and petcoke associated with rail transport and not from operations at the
18 Terminal.

19 119. The fact that the Oakland City Council’s intent was to prohibit rail
20 transportation and shipping of coal and petcoke is also reflected by the exemptions
21 from the scope of the Ordinance and Resolution of local coal and petcoke operations
22 unrelated to transportation: specifically exempted from the ban are (a) non-
23 commercial facilities located in Oakland, and (b) commercial manufacturing
24

1 facilities located in Oakland where coal and petcoke are consumed on-site. The
2 ESA Report states that these activities emit pollutants that can have impacts on
3 health and on the environment and provides no basis for distinguishing between
4 these activities and transportation activities.

5 120. Oakland City Councilmembers expressly stated that they enacted the
6 Ordinance and Resolution precisely to prevent the rail transportation and shipping of
7 coal and petcoke to and through Oakland. For example:

- 8 a. On June 28, 2016, shortly after the votes on Ordinance No. 13385 and
9 Resolution No. 86234, Councilmember Abel Guillen posted a link to an
10 article on social media declaring: “Oakland bans *coal shipments*”;
11 b. In a July 31, 2016 email, Councilmember Rebecca Kaplan sought
12 donations for her re-election campaign by touting her role in “banning the
13 *shipment* and storage of coal”;
14 c. In an August 23, 2016 post, Councilmember Lynette Gibson McElhaney,
15 discussing her bid for re-election, similarly emphasized that during her
16 time on the City Council, Oakland “**Banned *coal exports*”.

17 121. The statements by these City Councilmembers, and others, reflect
18 reality: If the Ordinance remains in place, no rail carrier will ship coal to Oakland
19 for export because there would be no way to move the coal from the rail carrier to
20 the ships. Since no rail carrier could bring coal to Oakland, ships likewise could not
21 transport coal for export.

22 122. The exclusive Sublease Option OBOT negotiated with TLS, as
23 described in paragraph 35 above, was set to earn both OBOT and the City of
24 Oakland millions of dollars over the 66-year life of the sublease. The transaction
was based, in part, on TLS’s expectation that it could select the bulk commodities to
be shipped to and through the Terminal without restriction.

1 transported by rail for at least some portion of its journey. The Department of
2 Transportation’s “Freight Facts and Figures” show that as of 2013, coal remained
3 the sixth most shipped commodity by weight in the U.S., with more than 1.2 billion
4 tons transported that year.

5 128. The United States is also a large beneficiary of international trade in
6 coal, reportedly exporting approximately 75 million short tons of coal in 2015 alone.
7 On information and belief, more coal is exported from the West Coast of the United
8 States than any other non-containerized commodity.

9 129. The proper and efficient functioning of the system for transportation of
10 commodities including coal and petcoke by rail requires a uniform transportation
11 infrastructure and regulations throughout the country and would be defeated by a
12 patchwork of local regulations.

13 130. The Ordinance and Resolution significantly impair the federal interest
14 in an efficient and uniform system of transportation of commodities in interstate and
15 foreign commerce by effectively prohibiting all shipments of coal and petcoke to
16 and through the Terminal. The loading, unloading, transloading, transferring,
17 storage and/or other handling of coal and petcoke are necessary and inextricable
18 parts of that uniform system of interstate shipment of coal and petcoke by rail and
19 export by ship—particularly at a rail-to-ship terminal, where the primary function is
20 to transfer bulk material such as coal and petcoke from rail to ship for international
21 export.

22 131. The Ordinance, as applied to the Terminal through the Resolution,
23 imposes burdens on interstate commerce that are impermissible under the
24

1 Commerce Clause. U.S. Const. art. I, § 8, cl. 3. The Ordinance burdens out-of-state
2 miners, shippers, customers and carriers of coal and petcoke while protecting in-
3 state interests by banning the transportation of coal and petcoke through the
4 Terminal and simultaneously exempting from the ban local operations within
5 Oakland that handle, store, and/or consume coal and petcoke.

6 132. The justifications for the ban imposed by the Ordinance and Resolution
7 and the purported benefits of the Ordinance and Resolution are illusory. The
8 Ordinance and Resolution impose a burden on interstate and foreign commerce, are
9 clearly excessive in relation to the purported local benefits, are not based on
10 evidence of a substantial danger to residents of Oakland and neighbors or users of
11 the Terminal, and there are less restrictive measures that can and do control any
12 fugitive dust emissions from the activities banned by the Ordinance and Resolution.

13 133. As described herein, the passage of the Ordinance and Resolution have
14 materially and substantially harmed OBOT, including by diminishing the value of
15 OBOT's rights pursuant to the DA and diminishing the value of its investment in the
16 West Gateway, imposing on OBOT substantial out-of-pocket costs to mitigate the
17 harm from Oakland's unconstitutional exercise of its power, and interfering with
18 OBOT's ability to attract partners and investments for the West Gateway project.

19 134. OBOT therefore seeks declaratory and injunctive relief finding that the
20 Ordinance and Resolution are unconstitutional under the Commerce Clause of the
21 United States Constitution.

SECOND CLAIM

**Preemption Under the ICCTA, the Hazardous Materials
Transportation Act, and the Shipping Act of 1984**

135. OBOT realleges and reincorporates by reference the allegations set forth in paragraphs 1 through 124, above.

136. The Ordinance, as applied to the Terminal through the Resolution, is preempted by federal law.

137. The Ordinance and Resolution are preempted by the Interstate Commerce Commission Termination Act (“ICCTA”), which vests the exclusive power to regulate rail transportation in the Surface and Transportation Board of the United States; the Hazardous Materials Transportation Act (“HMTA”), which vests the United States Secretary of Transportation with the authority to determine what materials warrant “hazardous” designations and restrictions or prohibitions in interstate and intrastate transportation; and the Shipping Act of 1984 which prohibits unreasonable discrimination against shippers, including by refusing to provide terminal services for reasons unrelated to transportation conditions.

138. The ICCTA, 49 U.S.C. 10501 *et seq.*, preempts the Ordinance and Resolution.

139. The ICCTA vests the Surface and Transportation Board (“STB”) with exclusive jurisdiction over “transportation by rail carriers” and the operation of “spur, industrial, team, switching or side tracks, or facilities”. 49 U.S.C. § 10501(b).

140. The ICCTA further provides that the remedies provided under ICCTA “with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law”. 49 U.S.C. § 10501(b)

1 141. As set forth herein, the ICCTA preempts the Ordinance and Resolution
2 because they impermissibly regulate services related to the movement of property
3 by rail, including receipt, storage, handling, and interchange of property at the
4 Terminal.

5 142. The Ordinance and Resolution unjustifiably restrict and foreclose the
6 foregoing activities by banning the loading, unloading, transloading, transferring,
7 storage and/or other handling of coal or petcoke at the Terminal.

8 143. The HMTA, 49 U.S.C. §§ 5101 *et seq.*, preempts the Ordinance and
9 Resolution.

10 144. The HMTA vests the United States Secretary of Transportation
11 (“Secretary”) with the exclusive authority to determine what materials warrant (and
12 do not warrant) “hazardous material” designations and restrictions or prohibitions in
13 interstate and intrastate transportation.

14 145. 49 U.S.C. § 5103 states that the Secretary shall designate materials as
15 hazardous when the Secretary determines that transporting the material in commerce
16 in a particular amount and form may pose an unreasonable risk to health and safety
17 or property.

18 146. 49 U.S.C. § 5125 preempts states and political subdivisions of states
19 from enacting any law or regulation that is an obstacle to accomplishing and
20 carrying out the HMTA or regulations thereunder.

21 147. 49 U.S.C. § 5125 further preempts any regulation that is “not
22 substantively the same” as any provision of the HMTA or regulations promulgated
23 under its authority with respect to “the *designation*, description, and classification of
24

1 hazardous material” and “the packing, repacking, *handling*, labeling, marking, and
2 placarding of hazardous material”. (emphasis added).

3 148. The Secretary has not designated or classified coal as a hazardous
4 material that must be prohibited from interstate or intrastate transport. The
5 Secretary has designated coal, along with other flammable solids like paper, wood,
6 and straw as materials that may require certain packaging, labelling and stowage
7 restrictions when shipped by marine vessel, but which do not present an
8 unreasonable risk of harm to health and safety when transported by rail and through
9 terminals.

10 149. The Secretary has designated “Coke, Hot” as a hazardous material
11 forbidden from transport, 49 CFR 172.101, but otherwise has designated petcoke as
12 a material that is safe to transport in interstate (and intrastate) commerce without
13 unreasonable risk of harm to health or safety.

14 150. In adopting the Ordinance and Resolution, Oakland has designated coal
15 and petcoke as materials that must be banned from transportation through the
16 Terminal because the City has determined that they pose a substantial risk to health
17 and safety. By designating coal and petcoke as materials that present an
18 unreasonable risk to health and safety when transported in interstate commerce to
19 and through the Terminal, the Ordinance and Resolution usurp the exclusive
20 authority granted to the Secretary and are an obstacle to accomplishing and carrying
21 out the HMTA’s goals of national uniform standards regarding the designation and
22 transportation of dangerous materials, and the HTMA’s purpose of avoiding a
23 patchwork of state and local regulations.
24

1 151. The Ordinance and Resolution are substantively different than the
2 HMTA and regulations thereunder as to at least the designation, classification and/or
3 handling of coal and petcoke.

4 152. The Shipping Act of 1984, 46 U.S.C. §§ 40101, *et seq.*, preempts
5 and/or otherwise prohibits the Ordinance and Resolution.

6 153. The Shipping Act provides that a “marine terminal operator may not—
7 (1) agree with another marine terminal operator or with a common carrier to
8 boycott, or unreasonably discriminate in the provision of terminal services to, a
9 common carrier or ocean tramp; (2) give any undue or unreasonable preference or
10 advantage or impose any undue or unreasonable prejudice or disadvantage with
11 respect to any person; or (3) unreasonably refuse to deal or negotiate.” 46 U.S.C.
12 § 41106.

13 154. The operator of the Terminal will be a marine terminal operator. The
14 Ordinance and Resolution preclude the operator of the Terminal from dealing with
15 and providing terminal related services to shippers of coal and petcoke.

16 155. It is unreasonable to refuse to provide terminal services for reasons
17 unrelated to transportation conditions. Transportation conditions include the
18 transportation needs of the cargo, competition from other carriers, insufficient cargo
19 to warrant service at a particular port, or conditions at a port or other facility that are
20 beyond the carrier’s control. Transportation conditions do not include local
21 regulations based on public policy.
22
23
24

1 156. Based on the City's public policy against coal and petcoke, the
2 Ordinance and Resolution require that operators of the Terminal refuse to provide
3 terminal services to shippers of coal and petcoke.

4 157. As described herein, transportation conditions cannot justify this
5 discrimination against shippers that deal in coal and petcoke.

6 158. The justifications for the ban imposed by the Ordinance and Resolution
7 and the purported benefits of the Ordinance and Resolution are illusory. The
8 Ordinance and Resolution impose a burden on interstate and foreign commerce, are
9 clearly excessive in relation to the purported local benefits, are not based on
10 evidence of a substantial danger to residents of Oakland and neighbors or users of
11 the Terminal, and there are less restrictive measures that can and do control any
12 fugitive dust emissions from the activities banned by the Ordinance and Resolution.

13 159. As described herein, the passage of the Ordinance and Resolution have
14 materially and substantially harmed OBOT, including by diminishing the value of
15 OBOT's rights pursuant to the DA and diminishing the value of its investment in the
16 West Gateway, imposing on OBOT substantial out-of-pocket costs to mitigate the
17 harm from Oakland's unconstitutional exercise of its power, and interfering with
18 OBOT's ability to attract partners and investments for the West Gateway project.

19 160. Based on the foregoing, OBOT seeks declaratory and injunctive relief
20 finding that the Ordinance and Resolution, at least as applied to the Terminal, are
21 preempted by federal law.

THIRD CLAIM
Breach of Contract

161. OBOT realleges and reincorporates by reference the allegations set forth in paragraphs 1 through 124, above.

162. In the DA, Oakland granted OBOT the vested right to develop and use (and/or sublease) the West Gateway property for a bulk commodities terminal subject to regulations existing as of the effective date of the DA, July 16, 2013.

163. The adoption and enforcement of the Ordinance and Resolution breach the DA because section 3.4.2 of the DA permits the City to apply a health and safety regulation adopted after July 16, 2013, to the Terminal only if (a) the application of any such health and safety regulation is “otherwise permissible pursuant to Laws” (“Laws” being defined to include the Constitution of the United States, and any codes, statutes, regulations, or executive mandates thereunder), and (b) the regulation is based on substantial evidence of a substantial danger to health and safety.

164. As set forth herein, the Ordinance and Resolution violate the United States Constitution and federal law.

165. As set forth herein, the Ordinance and Resolution are not based on substantial evidence.

166. The justifications for the ban imposed by the Ordinance and Resolution and the purported benefits of the Ordinance and Resolution are illusory. The Ordinance and Resolution impose a burden on interstate and foreign commerce, are clearly excessive in relation to the purported local benefits, are not based on evidence of a substantial danger to residents of Oakland and neighbors or users of

1 the Terminal, and there are less restrictive measures that can and do control any
 2 fugitive dust emissions from the activities banned by the Ordinance and Resolution.

3 167. As described herein, the passage of the Ordinance and Resolution have
 4 materially and substantially harmed OBOT, including by diminishing the value of
 5 OBOT's rights pursuant to the DA and diminishing the value of its investment in the
 6 West Gateway, imposing on OBOT substantial out-of-pocket costs to mitigate the
 7 harm from Oakland's unconstitutional exercise of its power, and interfering with
 8 OBOT's ability to attract partners and investments for the West Gateway project.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, OBOT respectfully prays that this Court:

11 A. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201, 42 U.S.C.
 12 § 1983, and/or Rule 57 of the Federal Rules of Civil Procedure, that:

- 13 i. the Commerce Clause of the United States Constitution prohibits
 14 Oakland from applying the Ordinance and Resolution to OBOT or
 15 the Terminal;
- 16 ii. the ICCTA preempts Oakland from applying the Ordinance and
 17 Resolution to OBOT or the Terminal;
- 18 iii. the HMTA preempts Oakland from applying the Ordinance and
 19 Resolution to OBOT or the Terminal;
- 20 iv. the Shipping Act of 1984 preempts and/or otherwise prohibits
 21 Oakland from applying the Ordinance and Resolution to OBOT or
 22 the Terminal; and

1 v. Section 3.4 of the DA prohibits Oakland from applying the
2 Ordinance and Resolution to OBOT or the Terminal.

3 B. Issue a permanent injunction, pursuant to 28 U.S.C. § 1651, 42 U.S.C.
4 § 1983, and/or Rule 65 of the Federal Rules of Civil Procedure, enjoining Oakland
5 from applying or enforcing the Ordinance and Resolution to OBOT or the Terminal;

6 C. Award reasonable attorneys' fees and costs; and

7 D. Award such other legal or equitable relief available under the law that
8 may be considered appropriate under the circumstances in light of the City of
9 Oakland's above alleged misconduct.

10
11
12 Dated: December 7, 2016 Respectfully submitted,

13 QUINN EMANUEL URQUHART &
14 SULLIVAN, LLP

15 By: /s/ Robert P. Feldman
16 Robert P. Feldman

17 *Attorney for Plaintiff OBOT*
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21
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23
24

ADRMOP,APPEAL,CLOSED,MEDTERM,PROTO,REFSET-JSC

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:16-cv-07014-VC**

Oakland Bulk & Oversized Terminal, LLC v. City of Oakland
Assigned to: Judge Vince Chhabria
Referred to: Magistrate Judge Jacqueline Scott Corley (Settlement)
Case in other court: 9th Circuit, 18-16105
9th Circuit, 18-16141
Cause: 42:1983 Civil Rights Act

Date Filed: 12/07/2016
Date Terminated: 05/23/2018
Jury Demand: Defendant
Nature of Suit: 950 Constitutional - State
Statute
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
12/07/2016	<u>1</u>	COMPLAINT <i>Oakland Bulk & Oversized Terminal, LLC</i> against City of Oakland (Filing fee \$ 400, receipt number 0971-10989155.). Filed byOakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 12/7/2016) (Entered: 12/07/2016)
12/07/2016	<u>2</u>	Civil Cover Sheet by Oakland Bulk & Oversized Terminal, LLC . (Feldman, Robert) (Filed on 12/7/2016) (Entered: 12/07/2016)
12/07/2016	<u>3</u>	Proposed Summons. (Feldman, Robert) (Filed on 12/7/2016) (Entered: 12/07/2016)
12/07/2016	<u>4</u>	Case assigned to Magistrate Judge Maria-Elena James. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new

		<p>case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening.</p> <p>Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 12/21/2016. (bwS, COURT STAFF) (Filed on 12/7/2016) (Entered: 12/07/2016)</p>
12/07/2016	<u>5</u>	Certificate of Interested Entities by Oakland Bulk & Oversized Terminal, LLC identifying Corporate Parent California Capital & Investment Group, Inc.. for Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 12/7/2016) (Entered: 12/07/2016)
12/07/2016	<u>6</u>	COMPLAINT CORRECTION OF DOCKET # <u>1</u> Oakland Bulk & Oversized Terminal, LLC against City of Oakland. Filed by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 12/7/2016) (Entered: 12/07/2016)
12/07/2016	<u>7</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 3/2/2017. Case Management Conference set for 3/9/2017 10:00 AM. (hdjS, COURT STAFF) (Filed on 12/7/2016) (Entered: 12/08/2016)
12/08/2016	<u>8</u>	Summons Issued as to City of Oakland. (hdjS, COURT STAFF) (Filed on 12/8/2016) (Entered: 12/08/2016)
12/08/2016		Electronic filing error. This filing will not be processed by the clerks office. Please re-file in its entirety and include all parties listed Re: <u>5</u> Certificate of Interested Entities filed by Oakland Bulk & Oversized Terminal, LLC (hdjS, COURT STAFF) (Filed on 12/8/2016) (Entered: 12/08/2016)
12/08/2016	<u>9</u>	Certificate of Interested Entities by Oakland Bulk & Oversized Terminal, LLC identifying Corporate Parent California Capital & Investment Group, Inc., Other Affiliate Oakland Global Rail Enterprise, LLC, Other Affiliate CCIG Oakland Global, LLC for Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 12/8/2016) (Entered: 12/08/2016)
12/12/2016	<u>10</u>	CERTIFICATE OF SERVICE by Oakland Bulk & Oversized Terminal, LLC (Feldman, Robert) (Filed on 12/12/2016) (Entered: 12/12/2016)
12/14/2016	<u>11</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Oakland Bulk & Oversized Terminal, LLC.. (Feldman, Robert) (Filed on 12/14/2016) (Entered: 12/14/2016)
12/15/2016	<u>12</u>	<p>CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.</p> <p>ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.</p> <p><i>This is a text only docket entry; there is no document associated with this notice.</i> (rmm2S, COURT STAFF) (Filed on 12/15/2016) (Entered: 12/15/2016)</p>

12/20/2016	<u>13</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Vince Chhabria for all further proceedings. Magistrate Judge Maria-Elena James no longer assigned to the case. This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and http://cand.uscourts.gov/cameras . Signed by Executive Committee on 12/20/16. (Attachments: # <u>1</u> Notice of Eligibility for Video Recording)(as, COURT STAFF) (Filed on 12/20/2016) (Entered: 12/20/2016)
12/20/2016	<u>14</u>	STIPULATION <i>EXTENDING TIME FOR DEFENDANT CITY OF OAKLAND TO FILE RESPONSIVE PLEADING</i> filed by City of Oakland. (Bowen, Colin) (Filed on 12/20/2016) (Entered: 12/20/2016)
12/23/2016	<u>15</u>	CLERK'S NOTICE RE REASSIGNED CASE: You are notified that the Court has scheduled an Initial Case Management Conference before Judge Vince Chhabria upon reassignment. For a copy of Judge Chhabria's Standing Order and other information, please refer to the Court's website at www.cand.uscourts.gov . Case Management Statement due by 2/28/2017. Initial Case Management Conference set for 3/7/2017 01:30 PM in Courtroom 4, 17th Floor, San Francisco. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (knm, COURT STAFF) (Filed on 12/23/2016) (Entered: 12/23/2016)
01/25/2017	<u>16</u>	NOTICE of Appearance by Kevin Drake Siegel (Siegel, Kevin) (Filed on 1/25/2017) (Entered: 01/25/2017)
01/25/2017	<u>17</u>	NOTICE of Appearance by Gregory Aker (Aker, Gregory) (Filed on 1/25/2017) (Entered: 01/25/2017)
01/25/2017	<u>18</u>	NOTICE of Appearance by Christopher Michael Long (Long, Christopher) (Filed on 1/25/2017) (Entered: 01/25/2017)
01/30/2017	<u>19</u>	MOTION to Dismiss - <i>Notice of Rule 12(b)(6) motion to dismiss and Rule 12(b)(6) motion to dismiss; Memo of points and authorities iso motion to dismiss</i> filed by City of Oakland. Motion Hearing set for 4/20/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. Responses due by 2/13/2017. Replies due by 2/21/2017. (Siegel, Kevin) (Filed on 1/30/2017) (Entered: 01/30/2017)
01/30/2017	<u>20</u>	Request for Judicial Notice re <u>19</u> MOTION to Dismiss - <i>Notice of Rule 12(b)(6) motion to dismiss and Rule 12(b)(6) motion to dismiss; Memo of points and authorities iso motion to dismiss</i> filed by City of Oakland. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Related document(s) <u>19</u>) (Siegel, Kevin) (Filed on 1/30/2017) (Entered: 01/30/2017)
02/01/2017	<u>21</u>	NOTICE of Appearance by Robert P. Feldman (Feldman, Robert) (Filed on 2/1/2017) (Entered: 02/01/2017)
02/01/2017	<u>22</u>	NOTICE of Appearance by Meredith McChesney Shaw (Shaw, Meredith) (Filed on 2/1/2017) (Entered: 02/01/2017)
02/01/2017	<u>23</u>	NOTICE of Appearance by David Edward Myre, III (Myre, David) (Filed on 2/1/2017) (Entered: 02/01/2017)
02/01/2017	<u>24</u>	NOTICE of Appearance by Eliyahu Ness (Ness, Eliyahu) (Filed on 2/1/2017) (Entered: 02/01/2017)
02/02/2017	<u>25</u>	STIPULATION WITH PROPOSED ORDER re <u>19</u> MOTION to Dismiss - <i>Notice of Rule 12(b)(6) motion to dismiss and Rule 12(b)(6) motion to dismiss; Memo of points and authorities iso motion to dismiss</i> filed by City of Oakland. (Siegel, Kevin) (Filed on 2/2/2017) (Entered: 02/02/2017)

02/08/2017	<u>26</u>	Order by Hon. Vince Chhabria granting <u>25</u> Stipulation Extending Time for Briefing on City's Rule 12(b)(6) Motion to Dismiss.(knm, COURT STAFF) (Filed on 2/8/2017) (Entered: 02/08/2017)
02/08/2017		Reset Deadlines as to <u>19</u> MOTION to Dismiss - <i>Notice of Rule 12(b)(6) motion to dismiss and Rule 12(b)(6) motion to dismiss; Memo of points and authorities iso motion to dismiss</i> . Responses due by 3/15/2017. Replies due by 4/5/2017. (knm, COURT STAFF) (Filed on 2/8/2017) (Entered: 02/08/2017)
02/16/2017	<u>27</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options <i>ADR Certification by Parties and Counsel</i> (Siegel, Kevin) (Filed on 2/16/2017) (Entered: 02/16/2017)
02/16/2017	<u>28</u>	MOTION to Intervene <i>and Request to File Rule 12(b)(6) Motion to Dismiss</i> filed by Sierra Club, San Francisco Baykeeper. Motion Hearing set for 4/20/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. Responses due by 3/2/2017. Replies due by 3/9/2017. (Attachments: # <u>1</u> Declaration of Sejal Choksi-Chugh, # <u>2</u> Declaration of Raymond Durkee, # <u>3</u> Declaration of Brittany King, # <u>4</u> Declaration of Kent Lewandowski, # <u>5</u> Declaration of Jessica Yarnall Loarie, # <u>6</u> Proposed Answer, # <u>7</u> Proposed Order)(O'Brien, Colin) (Filed on 2/16/2017) (Entered: 02/16/2017)
02/16/2017	<u>29</u>	Certificate of Interested Entities by San Francisco Baykeeper, Sierra Club (O'Brien, Colin) (Filed on 2/16/2017) (Entered: 02/16/2017)
02/16/2017	<u>30</u>	MOTION to Dismiss <i>and Memorandum in Support</i> filed by San Francisco Baykeeper, Sierra Club. Motion Hearing set for 4/20/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. Responses due by 3/2/2017. Replies due by 3/9/2017. (Attachments: # <u>1</u> Proposed Order)(Lewis, Heather) (Filed on 2/16/2017) (Entered: 02/16/2017)
02/16/2017	<u>31</u>	Request for Judicial Notice re <u>30</u> MOTION to Dismiss <i>and Memorandum in Support</i> filed by San Francisco Baykeeper, Sierra Club. (Attachments: # <u>1</u> Declaration of Adrienne Bloch)(Related document(s) <u>30</u>) (Bloch, Adrienne) (Filed on 2/16/2017) (Entered: 02/16/2017)
02/16/2017	<u>32</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options <i>by Plaintiff OBOT and Counsel</i> (Feldman, Robert) (Filed on 2/16/2017) (Entered: 02/16/2017)
02/16/2017	<u>33</u>	STIPULATION and Proposed Order selecting Mediation by Oakland Bulk & Oversized Terminal, LLC <i>and Defendant City of Oakland</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 2/16/2017) (Entered: 02/16/2017)
02/22/2017	<u>34</u>	Order by Hon. Vince Chhabria granting <u>33</u> Stipulation selecting Mediation.(knm, COURT STAFF) (Filed on 2/22/2017) (Entered: 02/22/2017)
02/24/2017	<u>35</u>	ADR Clerk's Notice Appointing Hon. Steven A. Brick (Ret.) as Mediator. (af, COURT STAFF) (Filed on 2/24/2017) (Entered: 02/24/2017)
02/28/2017	<u>36</u>	JOINT CASE MANAGEMENT STATEMENT & <i>[PROPOSED] ORDER</i> filed by City of Oakland. (Siegel, Kevin) (Filed on 2/28/2017) (Entered: 02/28/2017)
02/28/2017	<u>37</u>	STIPULATION WITH PROPOSED ORDER <i>REGARDING ADJUSTMENTS TO SCHEDULE FOR PROPOSED INTERVENORS' MOTION TO INTERVENE AND REQUEST TO FILE 12(b)(6) MOTION TO DISMISS</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Shaw, Meredith) (Filed on 2/28/2017) (Entered: 02/28/2017)
03/01/2017	<u>38</u>	Pre MED phone conference scheduled on March 10, 2017, at 11:00 AM PT. Parties should contact mediator's office as soon as possible if this time does not work for them.

		(af, COURT STAFF) (Filed on 3/1/2017) <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (Entered: 03/01/2017)
03/01/2017	<u>39</u>	CLERK'S NOTICE RESETTNG THE TIME FOR THE INITIAL CASE MANAGEMENT CONFERENCE. The Court will be in trial on 3/7/2017 and therefore is resetting the time for the initial case management conference in this case. Initial Case Management Conference set for 3/7/2017 03:30 PM in Courtroom 4, 17th Floor, San Francisco. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (knm, COURT STAFF) (Filed on 3/1/2017) (Entered: 03/01/2017)
03/02/2017	<u>40</u>	Statement of Non-Opposition re <u>28</u> MOTION to Intervene <i>and Request to File Rule 12(b)(6) Motion to Dismiss</i> filed byCity of Oakland. (Related document(s) <u>28</u>) (Siegel, Kevin) (Filed on 3/2/2017) (Entered: 03/02/2017)
03/02/2017	<u>41</u>	OPPOSITION/RESPONSE (re <u>28</u> MOTION to Intervene <i>and Request to File Rule 12(b)(6) Motion to Dismiss</i>) filed byOakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Declaration of Eliyahu Ness, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D)(Feldman, Robert) (Filed on 3/2/2017) (Entered: 03/02/2017)
03/03/2017	<u>42</u>	Order by Hon. Vince Chhabria granting <u>37</u> Stipulation REGARDING ADJUSTMENTS TO SCHEDULE FOR PROPOSED INTERVENORS' MOTION TO INTERVENE AND REQUEST TO FILE 12(b)(6) MOTION TO DISMISS. (knm, COURT STAFF) (Filed on 3/3/2017) (Entered: 03/03/2017)
03/03/2017		Reset Deadlines as to <u>28</u> MOTION to Intervene <i>and Request to File Rule 12(b)(6) Motion to Dismiss</i> . Responses due by 3/6/2017. Replies due by 3/13/2017. (knm, COURT STAFF) (Filed on 3/3/2017) (Entered: 03/03/2017)
03/07/2017	<u>44</u>	Minute Entry for proceedings held before Hon. Vince Chhabria: Initial Case Management Conference held on 3/7/2017. Defendant, City of Oakland to put together the legislative record by 4/11/2017. Case Management Statement due by 4/13/2017 and should include the table of contents of the legislative record from the defendant. Further Case Management Conference set for 4/20/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco. All briefing is to continue regarding the motion to intervene and the Court may rule on the motion without need for hearing and before the hearing date, but if not ruled on prior to the 4/20/2017 hearing date, all motions will be heard on that date. Defendant's 5 page motion re email due by 3/14/2017. Opposition to defendant's motion re email is due by 3/21/2017.Total Time in Court 41 minutes. Hearing not reported or recorded. Plaintiff Attorney Eliyahu Ness, Meregith Shaw, and Robert Feldman. Defendant Attorney Kevind Siegel and Gregory Aker. Proposed Intervenor Defendant Attorney Colin O'Brien, Heather Lewis, and Adrienne Bloch.This is a text only Minute Entry (knm, COURT STAFF) (Date Filed: 3/7/2017) (Entered: 03/10/2017)
03/09/2017	<u>43</u>	REPLY (re <u>28</u> MOTION to Intervene <i>and Request to File Rule 12(b)(6) Motion to Dismiss</i>) filed bySan Francisco Baykeeper, Sierra Club. (O'Brien, Colin) (Filed on 3/9/2017) (Entered: 03/09/2017)
03/14/2017	<u>45</u>	STIPULATION WITH PROPOSED ORDER re <u>30</u> MOTION to Dismiss <i>and Memorandum in Support to Adjust the Schedule for Briefing on Proposed Intervenor's Motion</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Shaw, Meredith) (Filed on 3/14/2017) (Entered: 03/14/2017)
03/14/2017	<u>46</u>	MOTION to Compel <i>DEFENDANT CITY OF OAKLAND'S MOTION TO COMPEL RETURN OR DESTRUCTION OF PRIVILEGED MATERIALS</i> filed by City of Oakland. Motion Hearing set for 4/20/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco

		before Hon. Vince Chhabria. Responses due by 3/28/2017. Replies due by 4/4/2017. (Siegel, Kevin) (Filed on 3/14/2017) (Entered: 03/14/2017)
03/14/2017	<u>47</u>	Declaration of Kevin D. Siegel in Support of <u>46</u> MOTION to Compel <i>DEFENDANT CITY OF OAKLAND'S MOTION TO COMPEL RETURN OR DESTRUCTION OF PRIVILEGED MATERIALS</i> filed by City of Oakland. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Related document(s) <u>46</u>) (Siegel, Kevin) (Filed on 3/14/2017) (Entered: 03/14/2017)
03/15/2017	<u>48</u>	OPPOSITION/RESPONSE (re <u>19</u> MOTION to Dismiss - <i>Notice of Rule 12(b)(6) motion to dismiss and Rule 12(b)(6) motion to dismiss; Memo of points and authorities iso motion to dismiss</i>) filed by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 3/15/2017) (Entered: 03/15/2017)
03/15/2017	<u>49</u>	Request for Judicial Notice re <u>48</u> Opposition/Response to Motion, filed by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Exhibit A (part 1 of 5), # <u>2</u> Exhibit A (part 2 of 5), # <u>3</u> Exhibit A (part 3 of 5), # <u>4</u> Exhibit A (part 4 of 5), # <u>5</u> Exhibit A (part 5 of 5), # <u>6</u> Exhibit B, # <u>7</u> Exhibit C, # <u>8</u> Exhibit D, # <u>9</u> Exhibit E (part 1 of 7), # <u>10</u> Exhibit E (part 2 of 7), # <u>11</u> Exhibit E (part 3 of 7), # <u>12</u> Exhibit E (part 4 of 7), # <u>13</u> Exhibit E (part 5 of 7), # <u>14</u> Exhibit E (part 6 of 7), # <u>15</u> Exhibit E (part 7 of 7), # <u>16</u> Exhibit F, # <u>17</u> Exhibit G (part 1 of 2), # <u>18</u> Exhibit G (part 2 of 2), # <u>19</u> Exhibit H, # <u>20</u> Exhibit I) (Related document(s) <u>48</u>) (Feldman, Robert) (Filed on 3/15/2017) (Entered: 03/15/2017)
03/21/2017		Set/Reset Hearing Mediation Hearing set for 4/17/2017 09:30 AM., at JAMS, Two Embarcadero Center, Suite 1500, San Francisco, CA 94111. (af, COURT STAFF) (Filed on 3/21/2017) (Entered: 03/21/2017)
03/21/2017	<u>50</u>	Administrative Motion to File Under Seal filed by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Redacted Version of Ex. A, # <u>2</u> Unredacted Version of Ex. A) (Feldman, Robert) (Filed on 3/21/2017) (Entered: 03/21/2017)
03/21/2017	<u>51</u>	OPPOSITION/RESPONSE (re <u>46</u> MOTION to Compel <i>DEFENDANT CITY OF OAKLAND'S MOTION TO COMPEL RETURN OR DESTRUCTION OF PRIVILEGED MATERIALS</i>) filed by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Declaration of Phil Tagami, # <u>2</u> Exhibit A, # <u>3</u> Declaration of Mark McClure, # <u>4</u> Declaration of Robert Feldman)(Feldman, Robert) (Filed on 3/21/2017) (Entered: 03/21/2017)
03/21/2017	<u>52</u>	CERTIFICATE OF SERVICE by Oakland Bulk & Oversized Terminal, LLC re <u>50</u> Administrative Motion to File Under Seal (Ness, Eliyahu) (Filed on 3/21/2017) (Entered: 03/21/2017)
03/23/2017	<u>53</u>	Order by Hon. Vince Chhabria granting <u>45</u> Stipulation re Adjustments to Schedule for Proposed Intervenor's Rule 12(b)(6) Motion to Dismiss.(knm, COURT STAFF) (Filed on 3/23/2017) (Entered: 03/23/2017)
03/23/2017		Set Deadlines as to <u>30</u> MOTION to Dismiss <i>and Memorandum in Support</i> . Responses due by 3/31/2017. Replies due by 4/10/2017. Motion Hearing set for 4/20/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. (knm, COURT STAFF) (Filed on 3/23/2017) (Entered: 03/23/2017)
03/27/2017	<u>54</u>	OBJECTIONS to re <u>51</u> Opposition/Response to Motion, <i>Defendant City of Oakland's Objections to Evidence as to Plaintiff Oakland Bulk & Oversized Terminal, LLC's Opposition to City of Oakland's Motion to Compel Return or Destruction of Privileged Materials</i> by City of Oakland. (Long, Christopher) (Filed on 3/27/2017) (Entered: 03/27/2017)

03/27/2017	<u>55</u>	RESPONSE to re <u>54</u> Objection, by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 3/27/2017) (Entered: 03/27/2017)
03/31/2017	<u>56</u>	OPPOSITION/RESPONSE (re <u>30</u> MOTION to Dismiss <i>and Memorandum in Support</i>) filed byOakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 3/31/2017) (Entered: 03/31/2017)
04/05/2017	<u>57</u>	REPLY (re <u>19</u> MOTION to Dismiss - <i>Notice of Rule 12(b)(6) motion to dismiss and Rule12(b)(6) motion to dismiss; Memo of points and authorities iso motion to dismiss</i>) <i>City of Oakland's Reply iso Motion to Dismiss</i> filed byCity of Oakland. (Siegel, Kevin) (Filed on 4/5/2017) (Entered: 04/05/2017)
04/05/2017	<u>58</u>	RESPONSE to re <u>49</u> Request for Judicial Notice,,, <i>City of Oakland's Response to Plaintiff Oakland Bulk & Oversized Terminal, LLC's Request for Judicial Notice iso Opposition to Motion to Dismiss Under FRCP 12(b)(a) and 12(b)(6) by City of Oakland</i> by City of Oakland. (Siegel, Kevin) (Filed on 4/5/2017) (Entered: 04/05/2017)
04/10/2017	<u>59</u>	REPLY (re <u>30</u> MOTION to Dismiss <i>and Memorandum in Support</i>) filed bySan Francisco Baykeeper, Sierra Club. (Yarnall, Jessica) (Filed on 4/10/2017) (Entered: 04/10/2017)
04/13/2017	<u>60</u>	CASE MANAGEMENT STATEMENT (<i>Joint</i>) filed by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Exhibit A to the Joint Case Management Statement) (Feldman, Robert) (Filed on 4/13/2017) (Entered: 04/13/2017)
04/18/2017	61	Certification of ADR Session by Mediator Steven A. Brick (Ret.): I hereby certify that the parties in this matter held a Mediation session on 4/17/2017. The case did not settle. Further facilitated discussions are expected by 4/28/2017. Mediation process is ongoing. <i>This is a text only docket entry; there is no document associated with this notice.</i> (af, COURT STAFF) (Filed on 4/18/2017) Modified on 4/20/2017 (af, COURT STAFF). (Entered: 04/18/2017)
04/20/2017	62	Minute Entry for proceedings held before Hon. Vince Chhabria: Motion Hearing re <u>46</u> MOTION to Compel <i>DEFENDANT CITY OF OAKLAND'S MOTION TO COMPEL RETURN OR DESTRUCTION OF PRIVILEGED MATERIALS</i> filed by City of Oakland, <u>19</u> MOTION to Dismiss - <i>Notice of Rule 12(b)(6) motion to dismiss and Rule12(b)(6) motion to dismiss; Memo of points and authorities iso motion to dismiss</i> filed by City of Oakland, <u>28</u> MOTION to Intervene <i>and Request to File Rule 12(b)(6) Motion to Dismiss</i> filed by Sierra Club, San Francisco Baykeeper, <u>30</u> MOTION to Dismiss <i>and Memorandum in Support</i> filed by Sierra Club, San Francisco Baykeeper and Further Case Management Conference held on 4/20/2017. The Court takes the motions under submission and will issue a written ruling. Discovery is open and parties may proceed with discovery. Plaintiff's request to expedite the trial schedule is granted. Last day to amend pleadings due by 6/19/2017. Close of Fact Discovery due by 9/29/2017. Opening Reports due by 9/15/2017. Rebuttal Reports due by 10/2/2017. Close of Expert Discovery due by 11/1/2017. Case Management Statement due by 7/5/2017. Further Case Management Conference set for 7/12/2017 01:30 PM in Courtroom 4, 17th Floor, San Francisco. Last day to hear Dispositive Motion Hearing set for 12/14/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. Final Pretrial Conference set for 1/10/2018 10:00 AM in Courtroom 4, 17th Floor, San Francisco. Bench Trial set for 1/16/2018 08:30 AM before Hon. Vince Chhabria. FTR Time 10:02- 11:32. Plaintiff Attorney s:Robert Feldman, Meredith Shaw and Eliyahu Ness. Defendant Attorneys: Kevin Siegel and Gregory Aker for City of Oakland. Intervenor Attorneys: Colin O'Brien, Adrienne Bloch, Heather Lewis, Jessica Loarie and Joanne Spalding. This is a text-only Minute Entry (knm, COURT

		STAFF) (Date Filed: 4/20/2017) Modified on 4/20/2017: Matter transcribed by Lydia Zinn (Zinn Reporting). (rjdS, COURT STAFF). (Entered: 04/20/2017)
04/20/2017	<u>63</u>	TRANSCRIPT ORDER for proceedings held on 04/20/2017 before Hon. Vince Chhabria by Oakland Bulk & Oversized Terminal, LLC, for Court Reporter FTR - San Francisco. (Ness, Eliyahu) (Filed on 4/20/2017) (Entered: 04/20/2017)
04/20/2017	<u>64</u>	TRANSCRIPT ORDER for proceedings held on 4/20/2017 before Hon. Vince Chhabria by City of Oakland, for Court Reporter FTR - San Francisco. (Siegel, Kevin) (Filed on 4/20/2017) (Entered: 04/20/2017)
04/21/2017	<u>65</u>	Transcript of digital audio recording of Proceedings held on 4/20/2017, before Judge Vince Chhabria. Court Reporter/Transcriber Lydia Zinn, telephone number (415) 531-6587. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re <u>63</u> Transcript Order, <u>64</u> Transcript Order) Redacted Transcript Deadline set for 5/22/2017. Release of Transcript Restriction set for 7/20/2017. (Related documents(s) <u>63</u> , <u>64</u>) (Zinn, Lydia) (Filed on 4/21/2017) (Entered: 04/21/2017)
05/08/2017	<u>66</u>	Proposed Order re <u>46</u> MOTION to Compel <i>DEFENDANT CITY OF OAKLAND'S MOTION TO COMPEL RETURN OR DESTRUCTION OF PRIVILEGED MATERIALS</i> by City of Oakland. (Siegel, Kevin) (Filed on 5/8/2017) (Entered: 05/08/2017)
05/08/2017	<u>67</u>	Letter from Attorney Kevin D. Siegel to Judge Chhabria re [Proposed] Order granting City's motion to Compel Return or Destruction of Privileged Materials. (Siegel, Kevin) (Filed on 5/8/2017) (Entered: 05/08/2017)
05/09/2017	<u>68</u>	RESPONSE to re <u>66</u> Proposed Order, <u>67</u> Letter <i>Opposition to City's Proposed Order</i> by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Proposed Order Exhibit 1 - OBOT's Proposed Order on the City's Motion to Compel Return or Destruction of Documents, # <u>2</u> Exhibit 2 - Redline Comparing OBOT and the City's Proposed Orders on Motion to Compel Return or Destruction of Documents)(Feldman, Robert) (Filed on 5/9/2017) (Entered: 05/09/2017)
05/10/2017	<u>69</u>	ORDER by Judge Vince Chhabria granting <u>46</u> Motion to Compel; granting <u>50</u> Administrative Motion to File Under Seal. (knm, COURT STAFF) (Filed on 5/10/2017) (Entered: 05/10/2017)
05/25/2017	<u>70</u>	AFFIDAVIT re <u>69</u> Order on Motion to Compel, Order on Administrative Motion to File Under Seal <i>Declaration of Robert Feldman re: Compliance with Court Order</i> by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Declaration of Phil Tagami re: Compliance with Court Order, # <u>2</u> Declaration of Mark McClure re: Compliance with Court Order)(Feldman, Robert) (Filed on 5/25/2017) (Entered: 05/25/2017)
06/06/2017	<u>71</u>	ORDER by Judge Vince Chhabria granting <u>28</u> Motion to Intervene; denying <u>19</u> Motion to Dismiss; denying <u>30</u> Motion to Dismiss. (knm, COURT STAFF) (Filed on 6/6/2017) (Entered: 06/06/2017)
06/09/2017	<u>72</u>	Amended Transcript of digital audio recording of Proceedings held on 4/20/2017, (amended to correct speaker identifications only) before Judge Vince Chhabria. Court Reporter/Transcriber Lydia Zinn, telephone number (415) 531-6587. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later

		than 5 business days from date of this filing. (Re <u>63</u> Transcript Order, <u>64</u> Transcript Order) Redacted Transcript Deadline set for 7/10/2017. Release of Transcript Restriction set for 9/7/2017. (Related documents(s) <u>63</u> , <u>64</u>) (Zinn, Lydia) (Filed on 6/9/2017) (Entered: 06/09/2017)
06/14/2017	<u>73</u>	ADR Clerk's Notice Setting ADR Phone Conference on Thursday, June 22, 2017, at 9:30 AM Pacific time. Please note that you must be logged into an ECF account of counsel of record in order to view this document. (af, COURT STAFF) (Filed on 6/14/2017) (Entered: 06/14/2017)
06/14/2017	<u>74</u>	AMENDED COMPLAINT against City of Oakland. Filed byOakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 6/14/2017) (Entered: 06/14/2017)
06/14/2017	<u>75</u>	STIPULATION WITH PROPOSED ORDER <i>Stipulated Protective Order</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Exhibit Redline Showing Parties' Deviations from N.D. Cal. Model Protective Order)(Myre, David) (Filed on 6/14/2017) (Entered: 06/14/2017)
06/22/2017	<u>76</u>	ADR Remark: ADR Phone Conference held by Tamara Lange on June 22, 2017. A further ADR Phone Conference is scheduled on August 2, 2017, at 10:00 AM Pacific time. The call-in information remains the same. (af, COURT STAFF) (Filed on 6/22/2017) <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (Entered: 06/22/2017)
06/27/2017	<u>77</u>	ANSWER to <u>74</u> First Amended Complaint, DEMAND FOR JURY TRIAL by City of Oakland. (Siegel, Kevin) (Filed on 6/27/2017) Modified on 6/28/2017 (farS, COURT STAFF). (Entered: 06/27/2017)
07/05/2017	<u>78</u>	Order by Hon. Vince Chhabria granting <u>75</u> Stipulated Protective Order.(knm, COURT STAFF) (Filed on 7/5/2017) (Entered: 07/05/2017)
07/05/2017	<u>79</u>	JOINT CASE MANAGEMENT STATEMENT & [PROPOSED] ORDER ; filed by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 7/5/2017) Modified on 7/6/2017 (aaaS, COURT STAFF). (Entered: 07/05/2017)
07/10/2017	<u>80</u>	CLERK'S NOTICE RESETTNG THE TIME FOR THE FURTHER CASE MANAGEMENT CONFERENCE. Further Case Management Conference set for 7/12/2017 02:00 PM in Courtroom 4, 17th Floor, San Francisco. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (knm, COURT STAFF) (Filed on 7/10/2017) (Entered: 07/10/2017)
07/12/2017	<u>81</u>	STIPULATION WITH PROPOSED ORDER re <u>78</u> Order on Stipulation <i>(Revised)</i> filed by San Francisco Baykeeper, Sierra Club. (Attachments: # <u>1</u> Redline Version)(O'Brien, Colin) (Filed on 7/12/2017) (Entered: 07/12/2017)
07/12/2017	<u>82</u>	NOTICE by City of Oakland <i>for Appearance of Timothy A. Colvig</i> (Aker, Gregory) (Filed on 7/12/2017) (Entered: 07/12/2017)
07/12/2017	<u>83</u>	NOTICE of Appearance by Joanne Marie Spalding <i>for Defendant-Intervenor Sierra Club</i> (Spalding, Joanne) (Filed on 7/12/2017) (Entered: 07/12/2017)
07/12/2017	<u>84</u>	Minute Entry for proceedings held before Hon. Vince Chhabria: Further Case Management Conference held on 7/12/2017. Production of discovery discussed. The parties are ordered to meet and confer and file with the Court by 7/17/2017 a stipulation regarding the agreed upon deadlines for each side to turn over the documents requested from the opposing side. If the parties cannot agree, a discovery letter with each sides' position and proposal must be submitted by 7/17/2017. FTR Time 2:06- 2:29. Plaintiff Attorney: Robert Feldman. Defendant Attorneys: Kevin Siegel and Timothy Colvig for City of Oakland; Colin O'Brien, Heather Lewis, and

		Jessica Yarnall Loarie for defendant intervenors. This is a text-only Minute Entry (knm, COURT STAFF) (Date Filed: 7/12/2017) Modified on 7/13/2017: Matter transcribed by Tara Bauer (ECHO Reporting). (rjdS, COURT STAFF). (Entered: 07/13/2017)
07/13/2017	<u>85</u>	Order by Hon. Vince Chhabria granting <u>81</u> Stipulated Revised Protective Order. (knm, COURT STAFF) (Filed on 7/13/2017) (Entered: 07/13/2017)
07/13/2017	<u>86</u>	TRANSCRIPT ORDER for proceedings held on 7/12/17 before Hon. Vince Chhabria by City of Oakland, for Court Reporter FTR - San Francisco. (Siegel, Kevin) (Filed on 7/13/2017) (Entered: 07/13/2017)
07/14/2017	<u>87</u>	TRANSCRIPT ORDER for proceedings held on 07/12/2017 before Hon. Vince Chhabria by Oakland Bulk & Oversized Terminal, LLC, for Court Reporter FTR - San Francisco. (Ness, Eliyahu) (Filed on 7/14/2017) (Entered: 07/14/2017)
07/17/2017	<u>88</u>	STIPULATION WITH PROPOSED ORDER <i>FOR DOCUMENT PRODUCTION</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 7/17/2017) (Entered: 07/17/2017)
07/18/2017	<u>89</u>	Order by Hon. Vince Chhabria granting <u>88</u> Stipulation for Document Production. (knm, COURT STAFF) (Filed on 7/18/2017) (Entered: 07/18/2017)
07/27/2017	<u>90</u>	Transcript of Proceedings of the official sound recording held on 07/12/17, before Judge Vince Chhabria. FTR/Transcriber Echo Reporting, Inc., telephone number 8584537590. Tape Number: FTR 2:06 - 2:29. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re <u>86</u> Transcript Order) Redaction Request due 8/17/2017. Redacted Transcript Deadline set for 8/28/2017. Release of Transcript Restriction set for 10/25/2017. (Related documents(s) <u>86</u>) (tgb, COURT STAFF) (Filed on 7/27/2017) (Entered: 07/27/2017)
08/02/2017	<u>91</u>	ADR Remark: ADR Phone Conference held by Tamara Lange on August 2, 2017. Counsel will contact ADR staff by August 11, 2017, if they wish to request mediator assignment. (af, COURT STAFF) (Filed on 8/2/2017) <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (Entered: 08/02/2017)
08/08/2017	<u>92</u>	**AMENDED** Transcript of Proceedings held on 07/12/17, before Judge Vince Chhabria. FTR/Transcriber Echo Reporting, Inc., telephone number 8584537590. Tape Number: FTR. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Redaction Request due 8/29/2017. Redacted Transcript Deadline set for 9/8/2017. Release of Transcript Restriction set for 11/6/2017. (tgb, COURT STAFF) (Filed on 8/8/2017) (Entered: 08/08/2017)
08/11/2017	<u>93</u>	NOTICE of Appearance by John Steven Gordon (Gordon, John) (Filed on 8/11/2017) (Entered: 08/11/2017)
08/29/2017	<u>94</u>	STIPULATION re 62 Motion Hearing,,,,,,,,, Case Management Conference - Further,,,,,,,,, Set Deadlines/Hearings,,,,,,,,, <i>STIPULATION AND [PROPOSED] ORDER FOR MODIFICATION OF PRETRIAL DEADLINES</i> filed by City of Oakland. (Siegel, Kevin) (Filed on 8/29/2017) (Entered: 08/29/2017)

08/30/2017	<u>95</u>	ORDER re <u>94</u> Stipulation FOR MODIFICATION OF PRETRIAL DEADLINES, filed by City of Oakland. Close of Fact Discovery due by 10/20/2017. Opening Reports due by 10/6/2017. Rebuttal Reports due by 10/20/2017. Close of Expert Discovery due by 11/3/2017. Signed by Judge Vince Chhabria on 8/30/2017. (knm, COURT STAFF) (Filed on 8/30/2017) (Entered: 08/30/2017)
09/18/2017	<u>96</u>	MOTION for Order to Show Cause <i>NOTICE AND APPLICATION FOR (1) ORDER TO SHOW CAUSE WHY A CONTEMPT CITATION SHOULD NOT ISSUE TO TERMINAL LOGISTICS SOLUTIONS, LLC AND ITS COUNSEL; AND (2) ORDER COMPELLING COMPLIANCE WITH SUBPOENA; MEMORANDUM OF POINTS AND AUTHORITIES</i> filed by City of Oakland. Responses due by 10/2/2017. Replies due by 10/10/2017. (Siegel, Kevin) (Filed on 9/18/2017) (Entered: 09/18/2017)
09/18/2017	<u>97</u>	Declaration of Kevin D. Siegel in Support of <u>96</u> MOTION for Order to Show Cause <i>NOTICE AND APPLICATION FOR (1) ORDER TO SHOW CAUSE WHY A CONTEMPT CITATION SHOULD NOT ISSUE TO TERMINAL LOGISTICS SOLUTIONS, LLC AND ITS COUNSEL; AND (2) ORDER COMPELLING COMPLIANCE WITH SUBPOENA; MEMORANDUM OF POINTS</i> DECLARATION OF KEVIN D. SIEGEL IN SUPPORT OF DEFENDANT CITY OF OAKLANDS APPLICATION FOR ORDER TO SHOW CAUSE REGARDING SUBPOENA TO TERMINAL LOGISTIC SOLUTIONS filed by City of Oakland. (Related document(s) <u>96</u>) (Siegel, Kevin) (Filed on 9/18/2017) (Entered: 09/18/2017)
09/18/2017	<u>98</u>	Proposed Order re <u>96</u> MOTION for Order to Show Cause <i>NOTICE AND APPLICATION FOR (1) ORDER TO SHOW CAUSE WHY A CONTEMPT CITATION SHOULD NOT ISSUE TO TERMINAL LOGISTICS SOLUTIONS, LLC AND ITS COUNSEL; AND (2) ORDER COMPELLING COMPLIANCE WITH SUBPOENA; MEMORANDUM OF POINTS [PROPOSED]</i> ORDER GRANTING DEFENDANT CITY OF OAKLANDS APPLICATION FOR ORDER TO SHOW CAUSE RE TERMINAL LOGISTICS SOLUTION, LLC AND ITS ATTORNEY by City of Oakland. (Siegel, Kevin) (Filed on 9/18/2017) (Entered: 09/18/2017)
09/19/2017	<u>99</u>	CERTIFICATE OF SERVICE by City of Oakland re <u>98</u> Proposed Order, <u>96</u> MOTION for Order to Show Cause <i>NOTICE AND APPLICATION FOR (1) ORDER TO SHOW CAUSE WHY A CONTEMPT CITATION SHOULD NOT ISSUE TO TERMINAL LOGISTICS SOLUTIONS, LLC AND ITS COUNSEL; AND (2) ORDER COMPELLING COMPLIANCE WITH SUBPOENA; MEMORANDUM OF POINTS</i> , <u>97</u> Declaration in Support,, (Siegel, Kevin) (Filed on 9/19/2017) (Entered: 09/19/2017)
09/19/2017	<u>100</u>	ERRATA re <u>97</u> Declaration in Support,, <i>NOTICE OF ERRATUM RE EXHIBIT B TO DECLARATION OF KEVIN D. SIEGEL IN SUPPORT OF DEFENDANT CITY OF OAKLANDS APPLICATION FOR ORDER TO SHOW CAUSE REGARDING SUBPOENA TO TERMINAL LOGISTICS SOLUTIONS</i> by City of Oakland. (Siegel, Kevin) (Filed on 9/19/2017) (Entered: 09/19/2017)
09/19/2017	<u>101</u>	ORDER to Show Cause as to Why a Contempt Citation Should Not Issue to Terminal Logistics Solutions, LLC, re <u>96</u> . Signed by Judge Vince Chhabria on 9/19/2017. (vclc3S, COURT STAFF) (Filed on 9/19/2017) (Entered: 09/19/2017)
09/20/2017		Reset Deadlines as to <u>96</u> MOTION for Order to Show Cause <i>NOTICE AND APPLICATION FOR (1) ORDER TO SHOW CAUSE WHY A CONTEMPT CITATION SHOULD NOT ISSUE TO TERMINAL LOGISTICS SOLUTIONS, LLC AND ITS COUNSEL; AND (2) ORDER COMPELLING COMPLIANCE WITH SUBPOENA; MEMORANDUM OF POINTS</i> . Responses due by 9/29/2017. Replies due by 10/4/2017. Motion Hearing set for 10/12/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco

		<i>before Hon. Vince Chhabria. (knm, COURT STAFF) (Filed on 9/20/2017) (Entered: 09/20/2017)</i>
09/20/2017	<u>102</u>	Joint Discovery Letter Brief <i>Regarding Purportedly Privileged Documents Withheld By City of Oakland</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Proposed Order by OBOT on Discovery Letter, # <u>2</u> Proposed Order by City of Oakland on Discovery Letter)(Feldman, Robert) (Filed on 9/20/2017) (Entered: 09/20/2017)
09/21/2017	<u>103</u>	Joint Discovery Letter Brief <i>re OBOT's Interrogatory Responses</i> filed by City of Oakland. (Attachments: # <u>1</u> Proposed Order by City of Oakland on Discovery Letter, # <u>2</u> Proposed Order by OBOT on Discovery Letter)(Siegel, Kevin) (Filed on 9/21/2017) (Entered: 09/21/2017)
09/29/2017	<u>104</u>	DECLARATION of Andrew A. Bassak in Opposition to <u>96</u> MOTION for Order to Show Cause <i>NOTICE AND APPLICATION FOR (1) ORDER TO SHOW CAUSE WHY A CONTEMPT CITATION SHOULD NOT ISSUE TO TERMINAL LOGISTICS SOLUTIONS, LLC AND ITS COUNSEL; AND (2) ORDER COMPELLING COMPLIANCE WITH SUBPOENA; MEMORANDUM OF POINTS</i> and <u>97</u> filed by Terminal Logistics Solutions, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Related document(s) <u>96</u>) (Bassak, Andrew) (Filed on 9/29/2017) (Entered: 09/29/2017)
09/29/2017	<u>105</u>	RESPONSE TO ORDER TO SHOW CAUSE by Terminal Logistics Solutions, LLC -- <i>CORRECTION OF DOCKET # 104</i> . (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Bassak, Andrew) (Filed on 9/29/2017) (Entered: 09/29/2017)
10/02/2017	<u>106</u>	NOTICE of Appearance by Gail Elizabeth Kavanagh (Kavanagh, Gail) (Filed on 10/2/2017) (Entered: 10/02/2017)
10/03/2017	<u>107</u>	ORDER re <u>103</u> , Denying City of Oakland's Request to Compel Responses to Contention Interrogatories (vclc3S, COURT STAFF) (Filed on 10/3/2017) (Entered: 10/03/2017)
10/04/2017	<u>108</u>	REPLY (re <u>96</u> MOTION for Order to Show Cause <i>NOTICE AND APPLICATION FOR (1) ORDER TO SHOW CAUSE WHY A CONTEMPT CITATION SHOULD NOT ISSUE TO TERMINAL LOGISTICS SOLUTIONS, LLC AND ITS COUNSEL; AND (2) ORDER COMPELLING COMPLIANCE WITH SUBPOENA; MEMORANDUM OF POINTS</i>) filed by City of Oakland. (Kavanagh, Gail) (Filed on 10/4/2017) (Entered: 10/04/2017)
10/04/2017	<u>109</u>	Declaration of Gail Kavanagh in Support of <u>108</u> Reply to Opposition/Response, filed by City of Oakland. (Related document(s) <u>108</u>) (Kavanagh, Gail) (Filed on 10/4/2017) (Entered: 10/04/2017)
10/04/2017	<u>110</u>	Declaration of Christopher Long in Support of <u>108</u> Reply to Opposition/Response, filed by City of Oakland. (Related document(s) <u>108</u>) (Kavanagh, Gail) (Filed on 10/4/2017) (Entered: 10/04/2017)
10/04/2017	<u>111</u>	Declaration of Kevin Siegel in Support of <u>108</u> Reply to Opposition/Response, filed by City of Oakland. (Related document(s) <u>108</u>) (Kavanagh, Gail) (Filed on 10/4/2017) (Entered: 10/04/2017)
10/05/2017	<u>112</u>	NOTICE of Appearance by Collin Spencer McCarthy and Helen H. Kang (McCarthy, Collin) (Filed on 10/5/2017) (Entered: 10/05/2017)
10/05/2017	<u>113</u>	NOTICE of Appearance by Deborah Ann Sivas (Sivas, Deborah) (Filed on 10/5/2017) (Entered: 10/05/2017)
10/05/2017	<u>114</u>	NOTICE of Appearance by Helen Kang (Kang, Helen) (Filed on 10/5/2017) (Entered: 10/05/2017)

10/06/2017	<u>115</u>	Order by Judge Vince Chhabria re <u>102</u> Discovery Letter Brief.(knm, COURT STAFF) (Filed on 10/6/2017) (Entered: 10/06/2017)
10/10/2017	<u>116</u>	REPLY (re <u>96</u> MOTION for Order to Show Cause <i>NOTICE AND APPLICATION FOR (1) ORDER TO SHOW CAUSE WHY A CONTEMPT CITATION SHOULD NOT ISSUE TO TERMINAL LOGISTICS SOLUTIONS, LLC AND ITS COUNSEL; AND (2) ORDER COMPELLING COMPLIANCE WITH SUBPOENA; MEMORANDUM OF POINTS</i>) Response to City's Request for New Relief in its Reply Brief filed byOakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 10/10/2017) (Entered: 10/10/2017)
10/10/2017	<u>117</u>	Discovery Letter BriefSubmission of Privilege Log per Order re Discovery Letter filed by City of Oakland. (Attachments: # <u>1</u> Exhibit A)(Siegel, Kevin) (Filed on 10/10/2017) (Entered: 10/10/2017)
10/10/2017	<u>118</u>	Administrative Motion to File Under Seal <i>Documents Reflecting TLS-OBOT Agreements Relevant to October 12, 2017 Hearing on OSC Re Contempt</i> filed by City of Oakland. (Attachments: # <u>1</u> Declaration, # <u>2</u> Proposed Order, # <u>3</u> Exhibit Unredaction Version of Exhibit A)(Siegel, Kevin) (Filed on 10/10/2017) (Entered: 10/10/2017)
10/11/2017	<u>119</u>	CLERK'S NOTICE vacating the hearing re Order to Show Cause scheduled for 10/12/2017. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (knm, COURT STAFF) (Filed on 10/11/2017) (Entered: 10/11/2017)
10/13/2017	<u>120</u>	NOTICE of Appearance by Marie Elizabeth Logan (Logan, Marie) (Filed on 10/13/2017) (Entered: 10/13/2017)
10/16/2017	<u>121</u>	ORDER DISCHARGING ORDER TO SHOW CAUSE; COMPELLING PRODUCTION OF DOCUMENTS BY TERMINAL LOGISTICS SOLUTIONS; EXTENDING DISCOVERY DEADLINE; DENYING AS MOOT ADMINISTRATIVE MOTION TO FILE UNDER SEAL. Rebuttal Reports due by 11/2/2017. Close of Expert Discovery due by 11/16/2017. Telephonic Further Case Management Conference set for 10/17/2017 02:30 PM. The City is ordered to provide a telephone conference line to the Courtroom Deputy at vccrd@cand.uscourts.gov, copying opposing counsel, by 3:00PM on Monday, October 16, 2017. Signed by Judge Vince Chhabria on 10/16/2017. (knm, COURT STAFF) (Filed on 10/16/2017) (Entered: 10/16/2017)
10/17/2017	<u>122</u>	ORDER Setting Deadlines and Page Limits. Signed by Judge Vince Chhabria on October 17, 2017. (vclc3S, COURT STAFF) (Filed on 10/17/2017) (Entered: 10/17/2017)
10/17/2017	<u>123</u>	Minute Entry for proceedings held before Judge Vince Chhabria: Telephonic Further Case Management Conference held on 10/17/2017. The parties and Court agree to modify the summary judgment schedule to allow the MSJs to be heard at the Pretrial Conference. See Court's order re briefing schedule and page limits. Dispositive Motion Hearing set for 1/10/2018 10:00 AM in Courtroom 2, 17th Floor, San Francisco before Judge Vince Chhabria. Total Time in Court: 34 minutes. Hearing not reported or recorded. Plaintiff Attorney: Robert Feldman. Defendant Attorneys: Kevin Siegel, Gregory Aker, and Christopher Long for City of Oakland; Colin O'Brien, Adrienne Bloch, and Jessica Loarie for defendant intervenors. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (knm, COURT STAFF) (Date Filed: 10/17/2017). (Entered: 10/18/2017)

10/20/2017	<u>124</u>	Discovery Letter Brief <i>SUBMISSION OF SUPPLEMENTAL PRIVILEGE LOG PER ORDER RE DISCOVERY LETTER</i> filed by City of Oakland. (Siegel, Kevin) (Filed on 10/20/2017) (Entered: 10/20/2017)
10/23/2017	<u>125</u>	STIPULATION WITH PROPOSED ORDER re <u>124</u> Discovery Letter Brief <i>SUBMISSION OF SUPPLEMENTAL PRIVILEGE LOG PER ORDER RE DISCOVERY LETTER</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 10/23/2017) (Entered: 10/23/2017)
10/25/2017	<u>126</u>	Order as Modified by Judge Vince Chhabria granting <u>125</u> Stipulation re SUBMISSION OF SUPPLEMENTAL PRIVILEGE LOG PER ORDER RE DISCOVERY LETTER. Letter due by close of business on 10/25/2017. (knm, COURT STAFF) (Filed on 10/25/2017) (Entered: 10/25/2017)
10/25/2017	<u>127</u>	Discovery Letter Brief re: <i>Supplemental Privilege Log re: ESA Documents</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 10/25/2017) (Entered: 10/25/2017)
10/27/2017	<u>128</u>	Letter Brief (<i>Joint</i>) re <i>OBOT's Over-Designation of Confidential Documents</i> filed by City of Oakland. (Attachments: # <u>1</u> Proposed Order [Proposed] Amended Protective Order, # <u>2</u> Exhibit Attachment A - Redline)(Siegel, Kevin) (Filed on 10/27/2017) (Entered: 10/27/2017)
11/06/2017	<u>129</u>	ORDER REFERRING CASE directly to Magistrate Judge Jacqueline Scott Corley for a Settlement Conference. Signed by Judge Vince Chhabria on 11/6/2017. (knm, COURT STAFF) (Filed on 11/6/2017) (Entered: 11/06/2017)
11/06/2017		CASE REFERRED to Magistrate Judge Jacqueline Scott Corley for Settlement (ahm, COURT STAFF) (Filed on 11/6/2017) (Entered: 11/06/2017)
11/06/2017	<u>130</u>	NOTICE of Appearance by Kevin Drake Siegel <i>Notice of Appearance of Dylan J. Crosby</i> (Siegel, Kevin) (Filed on 11/6/2017) (Entered: 11/06/2017)
11/07/2017	<u>131</u>	ORDER re Confidentiality Designations re <u>128</u> Letter Brief, filed by City of Oakland. Signed by Judge Vince Chhabria on 11/7/2017. (knm, COURT STAFF) (Filed on 11/7/2017) (Entered: 11/07/2017)
11/09/2017	<u>132</u>	NOTICE of Change In Counsel by Collin Spencer McCarthy (McCarthy, Collin) (Filed on 11/9/2017) (Entered: 11/09/2017)
11/13/2017	<u>133</u>	NOTICE AND ORDER REGARDING SETTLEMENT CONFERENCE. Settlement Conference set for 12/11/2017 at 9:30 AM in Courtroom F, 15th Floor, San Francisco. Signed by Magistrate Judge Jacqueline Scott Corley on 11/13/2017. (ahm, COURT STAFF) (Filed on 11/13/2017) (Entered: 11/13/2017)
11/13/2017	<u>134</u>	NOTICE of Appearance by John M. Neukom (Neukom, John) (Filed on 11/13/2017) (Entered: 11/13/2017)
11/20/2017	<u>135</u>	MOTION for Summary Judgment filed by Oakland Bulk & Oversized Terminal, LLC. Motion Hearing set for 1/10/2018 10:00 AM in Courtroom 2, 17th Floor, San Francisco before Judge Vince Chhabria. Responses due by 12/18/2017. Replies due by 12/26/2017. (Feldman, Robert) (Filed on 11/20/2017) (Entered: 11/20/2017)
11/20/2017	<u>136</u>	Declaration of Robert P. Feldman in Support of <u>135</u> MOTION for Summary Judgment filed by Oakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>135</u>) (Feldman, Robert) (Filed on 11/20/2017) (Entered: 11/20/2017)
11/20/2017	<u>137</u>	Declaration of Phillip H. Tagami in Support of <u>135</u> MOTION for Summary Judgment filed by Oakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>135</u>)

		(Feldman, Robert) (Filed on 11/20/2017) (Entered: 11/20/2017)
11/20/2017	<u>138</u>	Declaration of Dr. Andrew Maier in Support of <u>135</u> MOTION for Summary Judgment <i>and Exhibits A, B & C</i> filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>135</u>) (Feldman, Robert) (Filed on 11/20/2017) (Entered: 11/20/2017)
11/20/2017	<u>139</u>	Declaration of Megan Morodomi in Support of <u>135</u> MOTION for Summary Judgment filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>135</u>) (Feldman, Robert) (Filed on 11/20/2017) (Entered: 11/20/2017)
11/20/2017	<u>140</u>	Declaration of Lyle Chinkin in Support of <u>135</u> MOTION for Summary Judgment <i>and Exhibits A-E</i> filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>135</u>) (Feldman, Robert) (Filed on 11/20/2017) (Entered: 11/20/2017)
11/20/2017	<u>141</u>	Declaration of David E. Myre in Support of <u>135</u> MOTION for Summary Judgment filed byOakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Exhibit to Myre Declaration, # <u>2</u> Exhibit to Myre Declaration, # <u>3</u> Exhibit to Myre Declaration, # <u>4</u> Exhibit to Myre Declaration, # <u>5</u> Exhibit to Myre Declaration, # <u>6</u> Exhibit to Myre Declaration, # <u>7</u> Exhibit to Myre Declaration, # <u>8</u> Exhibit to Myre Declaration, # <u>9</u> Exhibit to Myre Declaration, # <u>10</u> Exhibit to Myre Declaration, # <u>11</u> Exhibit to Myre Declaration, # <u>12</u> Exhibit to Myre Declaration, # <u>13</u> Exhibit to Myre Declaration, # <u>14</u> Exhibit to Myre Declaration, # <u>15</u> Exhibit to Myre Declaration, # <u>16</u> Exhibit to Myre Declaration, # <u>17</u> Exhibit to Myre Declaration, # <u>18</u> Exhibit to Myre Declaration, # <u>19</u> Exhibit to Myre Declaration, # <u>20</u> Exhibit to Myre Declaration, # <u>21</u> Exhibit to Myre Declaration, # <u>22</u> Exhibit to Myre Declaration, # <u>23</u> Exhibit to Myre Declaration, # <u>24</u> Exhibit to Myre Declaration, # <u>25</u> Exhibit to Myre Declaration, # <u>26</u> Exhibit to Myre Declaration, # <u>27</u> Exhibit to Myre Declaration, # <u>28</u> Exhibit to Myre Declaration, # <u>29</u> Exhibit to Myre Declaration, # <u>30</u> Exhibit to Myre Declaration, # <u>31</u> Exhibit to Myre Declaration, # <u>32</u> Exhibit to Myre Declaration, # <u>33</u> Exhibit to Myre Declaration, # <u>34</u> Exhibit to Myre Declaration, # <u>35</u> Exhibit to Myre Declaration, # <u>36</u> Exhibit to Myre Declaration, # <u>37</u> Exhibit to Myre Declaration, # <u>38</u> Exhibit to Myre Declaration, # <u>39</u> Exhibit to Myre Declaration, # <u>40</u> Exhibit to Myre Declaration, # <u>41</u> Exhibit to Myre Declaration, # <u>42</u> Exhibit to Myre Declaration, # <u>43</u> Exhibit to Myre Declaration, # <u>44</u> Exhibit to Myre Declaration, # <u>45</u> Exhibit to Myre Declaration, # <u>46</u> Exhibit to Myre Declaration, # <u>47</u> Exhibit to Myre Declaration, # <u>48</u> Exhibit to Myre Declaration, # <u>49</u> Exhibit to Myre Declaration, # <u>50</u> Exhibit to Myre Declaration, # <u>51</u> Exhibit to Myre Declaration, # <u>52</u> Exhibit to Myre Declaration, # <u>53</u> Exhibit to Myre Declaration, # <u>54</u> Exhibit to Myre Declaration, # <u>55</u> Exhibit to Myre Declaration, # <u>56</u> Exhibit to Myre Declaration, # <u>57</u> Exhibit to Myre Declaration, # <u>58</u> Exhibit to Myre Declaration, # <u>59</u> Exhibit to Myre Declaration, # <u>60</u> Exhibit to Myre Declaration, # <u>61</u> Exhibit to Myre Declaration, # <u>62</u> Exhibit to Myre Declaration, # <u>63</u> Exhibit to Myre Declaration, # <u>64</u> Exhibit to Myre Declaration, # <u>65</u> Exhibit to Myre Declaration, # <u>66</u> Exhibit to Myre Declaration)(Related document(s) <u>135</u>) (Myre, David) (Filed on 11/20/2017) (Entered: 11/20/2017)
11/22/2017	<u>142</u>	ORDER RE DISCOVERY DISPUTE. Signed by Judge Vince Chhabria on 11/22/2017. (knm, COURT STAFF) (Filed on 11/22/2017) (Entered: 11/22/2017)
11/28/2017	<u>143</u>	Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Telephonic Settlement Conference held on 11/27/2017 & 11/28/2017. (Not Reported) (Time: 45 minutes) Attorneys for Plaintiff: Robert Feldman; Meredith Shaw. Attorney for Defendant City of Oakland: Kevin Siegel.

		(This is a text-only entry generated by the court. There is no document associated with this entry.) (ahm, COURT STAFF) (Date Filed: 11/28/2017) (Entered: 11/28/2017)
12/05/2017	<u>144</u>	NOTICE of Appearance by James M. Finberg , Stacey M. Leyton, and Altshuler Berzon LLP (Finberg, James) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>145</u>	MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. Motion Hearing set for 1/10/2018 10:00 AM in Courtroom 2, 17th Floor, San Francisco before Judge Vince Chhabria. Responses due by 12/18/2017. Replies due by 12/29/2017. (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>146</u>	OBJECTIONS to re <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment City of Oakland's Objections to Evidence Submitted in Opposition to Plaintiff's motion for summary judgment</i> by City of Oakland. (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>147</u>	Declaration of Claudia Cappio in Support of <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, Part 1, # <u>4</u> Exhibit 3, Part 2, # <u>5</u> Exhibit 3, Part 3)(Related document(s) <u>145</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>148</u>	Declaration of Claudia Cappio in Support of <u>147</u> Declaration in Support, [CORRECTED] <i>Declaration of Claudia Cappio iso City's motion for summary judgment, or in the alternative, partial summary judgment, etc.</i> filed by City of Oakland. (Related document(s) <u>147</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>149</u>	Declaration of Patrick Cashman in Support of <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Related document(s) <u>145</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>150</u>	Declaration of Heather Klein in Support of <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Related document(s) <u>145</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>151</u>	Declaration of John Monetta in Support of <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Related document(s) <u>145</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>152</u>	Declaration of Ranajit Sahu in Support of <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Related document(s) <u>145</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>153</u>	Declaration of H. Nadia Moore, Ph.D. in Support of <u>145</u> MOTION for Summary

		Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Related document(s) <u>145</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>154</u>	Declaration of Carlos Fernandez-Pello, Ph.D. in Support of <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Related document(s) <u>145</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>155</u>	Declaration of Victoria Evans in Support of <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Related document(s) <u>145</u>) (Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>156</u>	MOTION for Summary Judgment <i>Defendant Intervenors Notice of Motion, Motion for Summary Judgement, and Memorandum in Support, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by San Francisco Baykeeper, Sierra Club. Motion Hearing set for 1/10/2018 10:00 AM in Courtroom 2, 17th Floor, San Francisco before Judge Vince Chhabria. Responses due by 12/18/2017. Replies due by 12/29/2017. (Spalding, Joanne) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>157</u>	Administrative Motion to File Under Seal filed by City of Oakland. (Attachments: # <u>1</u> Declaration Long Decl. iso administrative motion to file under seal, # <u>2</u> Proposed Order Prop. order re administrative motion to file under seal, # <u>3</u> Redacted vers. Exh. 19, # <u>4</u> Unredacted vers. Exh. 19, # <u>5</u> Redacted vers. Exh. 20, # <u>6</u> Unredacted vers. Exh. 20, # <u>7</u> Redacted vers. Exh. 21, # <u>8</u> Unredacted vers. Exh. 21, # <u>9</u> Redacted vers. Exh. 22, Pt. 1, # <u>10</u> Unredacted vers. Exh. 22, Pt. 1, # <u>11</u> Redacted vers. Exh. 22, Pt. 2, # <u>12</u> Unredacted vers. Exh. 22, Pt. 2)(Siegel, Kevin) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>158</u>	Declaration of Christopher Long in Support of <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i> filed by City of Oakland. (Related document(s) <u>145</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>159</u>	EXHIBITS re <u>158</u> Declaration in Support, filed by City of Oakland. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2 - Part 1 of 3, # <u>3</u> Exhibit 2 - Part 2 of 3, # <u>4</u> Exhibit 2 - Part 3 of 3, # <u>5</u> Exhibit 3, # <u>6</u> Exhibit 4, # <u>7</u> Exhibit 5, # <u>8</u> Exhibit 6, # <u>9</u> Exhibit 7, # <u>10</u> Exhibit 8) (Related document(s) <u>158</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>160</u>	EXHIBITS re <u>158</u> Declaration in Support, filed by City of Oakland. (Attachments: # <u>1</u> Exhibit 9, # <u>2</u> Exhibit 10 - Part 1, # <u>3</u> Exhibit 10 - Part 2, # <u>4</u> Exhibit 10 - Part 3, # <u>5</u> Exhibit 11, # <u>6</u> Exhibit 12, # <u>7</u> Exhibit 13, # <u>8</u> Exhibit 14, # <u>9</u> Exhibit 15, # <u>10</u> Exhibit 16) (Related document(s) <u>158</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>161</u>	EXHIBITS re <u>158</u> Declaration in Support, filed by City of Oakland. (Attachments: # <u>1</u> Exhibit 17 - Part 1, # <u>2</u> Exhibit 17 - Part 2, # <u>3</u> Exhibit 18, # <u>4</u> Exhibit 19 - Part 1, # <u>5</u> Exhibit 19 - Part 2, # <u>6</u> Exhibit 20, # <u>7</u> Exhibit 21, # <u>8</u> Exhibit 22, # <u>9</u> Exhibit 23)(Related document(s) <u>158</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>162</u>	EXHIBITS re <u>158</u> Declaration in Support, filed by City of Oakland. (Attachments: # <u>1</u> Exhibit 24 - Part 1, # <u>2</u> Exhibit 24 - Part 2, # <u>3</u> Exhibit 24 - Part 3, # <u>4</u> Exhibit 24 - Part 4,

		# <u>5</u> Exhibit 24 - Part 5, # <u>6</u> Exhibit 24 - Part 6, # <u>7</u> Exhibit 25, # <u>8</u> Exhibit 26, # <u>9</u> Exhibit 27, # <u>10</u> Exhibit 28, # <u>11</u> Exhibit 29)(Related document(s) <u>158</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>163</u>	EXHIBITS re <u>158</u> Declaration in Support, filed byCity of Oakland. (Attachments: # <u>1</u> Exhibit 30, # <u>2</u> Exhibit 31, # <u>3</u> Exhibit 32, # <u>4</u> Exhibit 33, # <u>5</u> Exhibit 34, # <u>6</u> Exhibit 35, # <u>7</u> Exhibit 36, # <u>8</u> Exhibit 37, # <u>9</u> Exhibit 38, # <u>10</u> Exhibit 39, # <u>11</u> Exhibit 40)(Related document(s) <u>158</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>164</u>	EXHIBITS re <u>158</u> Declaration in Support, filed byCity of Oakland. (Attachments: # <u>1</u> Exhibit 41, # <u>2</u> Exhibit 42, # <u>3</u> Exhibit 43, # <u>4</u> Exhibit 44, # <u>5</u> Exhibit 45, # <u>6</u> Exhibit 46, # <u>7</u> Exhibit 47, # <u>8</u> Exhibit 48, # <u>9</u> Exhibit 49, # <u>10</u> Exhibit 50)(Related document(s) <u>158</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>165</u>	EXHIBITS re <u>158</u> Declaration in Support, filed byCity of Oakland. (Attachments: # <u>1</u> Exhibit 51, # <u>2</u> Exhibit 52, # <u>3</u> Exhibit 53, # <u>4</u> Exhibit 54 - Part 1 of 4, # <u>5</u> Exhibit 54 - Part 2 of 4, # <u>6</u> Exhibit 54 - Part 3 of 4, # <u>7</u> Exhibit 54 - Part 4 of 4, # <u>8</u> Exhibit 55, # <u>9</u> Exhibit 56, # <u>10</u> Exhibit 57)(Related document(s) <u>158</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/05/2017	<u>166</u>	EXHIBITS re <u>158</u> Declaration in Support, filed byCity of Oakland. (Attachments: # <u>1</u> Exhibit 58, # <u>2</u> Exhibit 59, # <u>3</u> Exhibit 60, # <u>4</u> Exhibit 61, # <u>5</u> Exhibit 62, # <u>6</u> Exhibit 63, # <u>7</u> Exhibit 64, # <u>8</u> Exhibit 65, # <u>9</u> Exhibit 66, # <u>10</u> Exhibit 67, # <u>11</u> Exhibit 68, # <u>12</u> Exhibit 69, # <u>13</u> Exhibit 70)(Related document(s) <u>158</u>) (Long, Christopher) (Filed on 12/5/2017) (Entered: 12/05/2017)
12/06/2017	<u>167</u>	CERTIFICATE OF SERVICE by City of Oakland re <u>157</u> Administrative Motion to File Under Seal (Long, Christopher) (Filed on 12/6/2017) (Entered: 12/06/2017)
12/07/2017	<u>168</u>	MOTION to File Amicus Curiae Brief filed by Center for Biological Diversity, Communities for a Better Environment, No Coal in Oakland, West Oakland Environmental Indicators Project, Asian Pacific Environmental Network. Responses due by 12/21/2017. Replies due by 12/28/2017. (Attachments: # <u>1</u> Exhibit Brief of Amici Curiae)(Evans, Jonathan) (Filed on 12/7/2017) (Entered: 12/07/2017)
12/08/2017	<u>169</u>	EXHIBITS re <u>168</u> MOTION to File Amicus Curiae Brief , <i>[Proposed]</i> Order filed byAsian Pacific Environmental Network, Center for Biological Diversity, Communities for a Better Environment, No Coal in Oakland, West Oakland Environmental Indicators Project. (Related document(s) <u>168</u>) (Evans, Jonathan) (Filed on 12/8/2017) (Entered: 12/08/2017)
12/08/2017	<u>170</u>	MOTION to File Amicus Curiae Brief filed by State of California. Motion Hearing set for 1/10/2018 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Judge Vince Chhabria. Responses due by 12/22/2017. Replies due by 12/29/2017. (Attachments: # <u>1</u> Exhibit Brief of Amicus Curiae, State of California, By and Through Xavier Becerra, Attorney General, # <u>2</u> Proposed Order <i>[Proposed]</i> Order Granting Motion for Leave to File Brief of Amicus Curiae the State of California, By and Through Xavier Becerra, Attorney General)(Fua, Rose) (Filed on 12/8/2017) (Entered: 12/08/2017)
12/11/2017	<u>171</u>	Declaration of David E. Myre in Support of <u>157</u> Administrative Motion to File Under Seal filed byOakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Declaration of Skyler Sanders ISO the City of Oakland's Administrative Motion to File Under Seal) (Related document(s) <u>157</u>) (Myre, David) (Filed on 12/11/2017) (Entered: 12/11/2017)
12/11/2017	<u>172</u>	Minute Entry for proceedings held before Magistrate Judge Jacqueline Scott Corley: Settlement Conference held on 12/11/2017. Further telephone settlement conference scheduled for December 15, 2017 at 3:30 p.m., and further in-person

		<p>settlement conference scheduled for December 18, 2017 at 9:30 a.m. at the Attorneys' Lounge in the Oakland Federal Courthouse. (Not Reported) (Time: 5.0)</p> <p>Attorneys for Plaintiff: Robert Feldman; Meredith Shaw. Attorneys for Defendant City of Oakland: Kevin Siegel; Bijal Patel.</p> <p>(This is a text-only entry generated by the court. There is no document associated with this entry.)</p> <p>(ahm, COURT STAFF) (Date Filed: 12/11/2017) (Entered: 12/12/2017)</p>
12/13/2017	<u>173</u>	<p>ORDER RE AMICUS BRIEFS. Motions due by 12/29/2017.. Signed by Judge Vince Chhabria on 12/13/2017. (knm, COURT STAFF) (Filed on 12/13/2017) (Entered: 12/13/2017)</p>
12/14/2017	<u>174</u>	<p>CLERK'S NOTICE VACATING HEARINGS. To all parties and counsel of record: Please take notice that the telephone conference scheduled for December 15, 2017 and the settlement conference scheduled for December 18, 2017 are vacated.</p> <p>(This is a text only docket entry, there is no document associated with this notice.)</p> <p>(ahm, COURT STAFF) (Filed on 12/14/2017) (Entered: 12/14/2017)</p>
12/18/2017	<u>175</u>	<p>Declaration of Robert Feldman in Support of <u>136</u> Declaration in Support <i>Corrected Declaration ISO Plaintiff's Motion for Summary Judgment</i> filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>136</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)</p>
12/18/2017	<u>176</u>	<p>Declaration of Dr. Andrew Maier in Support of <u>138</u> Declaration in Support <i>Corrected Declaration ISO Plaintiff's Motion for Summary Judgment</i> filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>138</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)</p>
12/18/2017	<u>177</u>	<p>Declaration of Phillip H. Tagami in Support of <u>137</u> Declaration in Support <i>Corrected Declaration ISO Plaintiff's Motion for Summary Judgment</i> filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>137</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)</p>
12/18/2017	<u>178</u>	<p>Declaration of David E. Myre in Support of <u>141</u> Declaration in Support,,,,,, <i>Corrected Declaration ISO Plaintiff's Motion for Summary Judgment</i> filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>141</u>) (Myre, David) (Filed on 12/18/2017) (Entered: 12/18/2017)</p>
12/18/2017	<u>179</u>	<p>OBJECTIONS to re <u>146</u> Objection, <i>Plaintiff's Responses to City of Oakland's Objections to Evidence.Submitted ISO Plaintiff's Motion for Summary Judgment</i> by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)</p>
12/18/2017	<u>180</u>	<p>OBJECTIONS to re <u>156</u> MOTION for Summary Judgment <i>Defendant Intervenor's Notice of Motion, Motion for Summary Judgement, and Memorandum in Support, and Opposition to Plaintiff's Motion for Summary Judgment Plaintiff's Objections to Evidence Relied on by Intervenor's Sierra Club & San Francisco Baykeeper's Memorandum ISO & Opposition to Plaintiff's Motion for Summary Judgment</i> by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)</p>
12/18/2017	<u>181</u>	<p>Declaration of Megan Morodomi in Support of <u>139</u> Declaration in Support <i>Corrected Declaration ISO Plaintiff's Motion for Summary Judgment</i> filed byOakland Bulk &</p>

		Oversized Terminal, LLC. (Related document(s) <u>139</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)
12/18/2017	<u>182</u>	REPLY (re <u>135</u> MOTION for Summary Judgment) <i>Plaintiff's Reply ISO Its Motion for Summary Judgment & Opposition to Defendants' Motion for Summary Judgment</i> filed byOakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)
12/18/2017	<u>183</u>	Declaration of Phillip H. Tagami in Support of <u>182</u> Reply to Opposition/Response, filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>182</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)
12/18/2017	<u>184</u>	Declaration of Mark McClure in Support of <u>182</u> Reply to Opposition/Response, filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>182</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)
12/18/2017	<u>185</u>	Declaration of Lyle Chinkin in Support of <u>182</u> Reply to Opposition/Response, filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>182</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)
12/18/2017	<u>186</u>	Declaration of Dr. Andrew Maier in Support of <u>182</u> Reply to Opposition/Response, <i>Supplemental Declaration</i> filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>182</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)
12/18/2017	<u>187</u>	Declaration of Dr. Ali S. Rangwala in Support of <u>182</u> Reply to Opposition/Response, filed byOakland Bulk & Oversized Terminal, LLC. (Related document(s) <u>182</u>) (Feldman, Robert) (Filed on 12/18/2017) (Entered: 12/18/2017)
12/18/2017	<u>188</u>	Declaration of David E. Myre in Support of <u>182</u> Reply to Opposition/Response, filed byOakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Exhibit 67 to the Supplemental Myre Declaration, # <u>2</u> Exhibit 68 to the Supplemental Myre Declaration, # <u>3</u> Exhibit 69 to the Supplemental Myre Declaration, # <u>4</u> Exhibit 70 to the Supplemental Myre Declaration, # <u>5</u> Exhibit 71 to the Supplemental Myre Declaration, # <u>6</u> Exhibit 72 to the Supplemental Myre Declaration, # <u>7</u> Exhibit 73 to the Supplemental Myre Declaration, # <u>8</u> Exhibit 74 to the Supplemental Myre Declaration, # <u>9</u> Exhibit 75 to the Supplemental Myre Declaration, # <u>10</u> Exhibit 76 to the Supplemental Myre Declaration) (Related document(s) <u>182</u>) (Myre, David) (Filed on 12/18/2017) (Entered: 12/18/2017)
12/22/2017	<u>189</u>	TRANSCRIPT ORDER for Future Trial with Daily Transcripts by Oakland Bulk & Oversized Terminal, LLC. (Myre, David) (Filed on 12/22/2017) (Entered: 12/22/2017)
12/28/2017	<u>190</u>	TRANSCRIPT ORDER for Future Trial with Daily Transcripts by City of Oakland. (Siegel, Kevin) (Filed on 12/28/2017) (Entered: 12/28/2017)
12/29/2017	<u>191</u>	REPLY (re <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i>) filed byCity of Oakland. (Siegel, Kevin) (Filed on 12/29/2017) (Entered: 12/29/2017)
12/29/2017	<u>192</u>	REPLY (re <u>145</u> MOTION for Summary Judgment <i>City of Oakland's Notice of motion and Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Opposition to Plaintiff's Motion for Summary Judgment</i>) <i>REPLY ISO CITY'S OBJECTIONS TO EVIDENCE SUBMITTED WITH PLAINTIFF OBOT'S MSJ</i> filed byCity of Oakland. (Attachments: # <u>1</u> Proposed Order Prop. order sustaining City's objections to evidence)(Siegel, Kevin) (Filed on 12/29/2017) (Entered: 12/29/2017)
12/29/2017	<u>193</u>	Declaration of Christopher Long in Support of <u>191</u> Reply to Opposition/Response, <i>In Support of Its Motion for Summary Judgment</i> filed byCity of Oakland. (Attachments: # <u>1</u> Exhibit 71, # <u>2</u> Exhibit 72, # <u>3</u> Exhibit 73, # <u>4</u> Exhibit 74, # <u>5</u> Exhibit 75, # <u>6</u> Exhibit 76,

		# <u>7</u> Exhibit 77, # <u>8</u> Exhibit 78, # <u>9</u> Exhibit 79, # <u>10</u> Exhibit 80, # <u>11</u> Exhibit 81, # <u>12</u> Exhibit 82)(Related document(s) <u>191</u>) (Siegel, Kevin) (Filed on 12/29/2017) (Entered: 12/29/2017)
12/29/2017	<u>194</u>	REPLY (re <u>156</u> MOTION for Summary Judgment <i>Defendant Intervenor's Notice of Motion, Motion for Summary Judgment, and Memorandum in Support, and Opposition to Plaintiffs Motion for Summary Judgment</i>) filed by San Francisco Baykeeper, Sierra Club. (Spalding, Joanne) (Filed on 12/29/2017) (Entered: 12/29/2017)
12/29/2017	<u>195</u>	OBJECTIONS to re <u>180</u> Objection, <i>RESPONSE to Plaintiff Oakland Bulk & Oversized Terminal, LLC's Objection to Evidence Submitted ISO Intervenor's Motion for Summary Judgment</i> by San Francisco Baykeeper, Sierra Club. (Spalding, Joanne) (Filed on 12/29/2017) (Entered: 12/29/2017)
01/02/2018	<u>196</u>	MOTION in Limine <i>City of Oakland's notice of motion and motion in limine no. 1 re purported predetermination evidence and OBOT's opposition to City's motion in limine no. 1</i> filed by City of Oakland. Motion Hearing set for 1/10/2018 10:00 AM in Courtroom 2, 17th Floor, San Francisco before Judge Vince Chhabria. Responses due by 1/16/2018. Replies due by 1/23/2018. (Siegel, Kevin) (Filed on 1/2/2018) (Entered: 01/02/2018)
01/02/2018	<u>197</u>	MOTION in Limine <i>City of Oakland's notice of motion and motion in limine No. 2 re legal conclusions purporting to interpret the ordinance and OBOT's opposition to City's motion in limine no. 2</i> filed by City of Oakland. Motion Hearing set for 1/10/2018 10:00 AM in Courtroom 2, 17th Floor, San Francisco before Judge Vince Chhabria. Responses due by 1/16/2018. Replies due by 1/23/2018. (Siegel, Kevin) (Filed on 1/2/2018) (Entered: 01/02/2018)
01/03/2018	<u>198</u>	First MOTION for leave to appear in Pro Hac Vice <i>STEPHEN SWEDLOW</i> (Filing fee \$ 310, receipt number 0971-11992501.) filed by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Certificate/Proof of Service Certificate of good standing) (Swedlow, Stephen) (Filed on 1/3/2018) (Entered: 01/03/2018)
01/03/2018	<u>199</u>	Pretrial Conference Statement by Oakland Bulk & Oversized Terminal, LLC . (Feldman, Robert) (Filed on 1/3/2018) (Entered: 01/03/2018)
01/03/2018	<u>200</u>	TRIAL BRIEF by City of Oakland. (Siegel, Kevin) (Filed on 1/3/2018) (Entered: 01/03/2018)
01/03/2018	<u>201</u>	TRIAL BRIEF by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 1/3/2018) (Entered: 01/03/2018)
01/03/2018	<u>202</u>	Exhibit List <i>Joint</i> by Oakland Bulk & Oversized Terminal, LLC.. (Feldman, Robert) (Filed on 1/3/2018) (Entered: 01/03/2018)
01/04/2018	<u>203</u>	Exhibit List <i>Joint First Amended</i> by Oakland Bulk & Oversized Terminal, LLC.. (Feldman, Robert) (Filed on 1/4/2018) (Entered: 01/04/2018)
01/05/2018	<u>204</u>	Joint Discovery Letter Brief <i>re third party ESA documents withheld as privileged</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Proposed Order, # <u>3</u> Proposed Order)(Feldman, Robert) (Filed on 1/5/2018) (Entered: 01/05/2018)
01/08/2018	<u>205</u>	ERRATA re <u>158</u> Declaration in Support, <u>163</u> Exhibits, <i>Exhibit 34 [Document 163-5]</i> by City of Oakland. (Long, Christopher) (Filed on 1/8/2018) (Entered: 01/08/2018)
01/08/2018	<u>206</u>	STIPULATION WITH PROPOSED ORDER <i>Joint Request & [Proposed] Order Regarding Courtroom Equipment</i> filed by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 1/8/2018) (Entered: 01/08/2018)

01/09/2018	<u>207</u>	ERRATA re <u>135</u> MOTION for Summary Judgment by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 1/9/2018) (Entered: 01/09/2018)
01/09/2018	<u>208</u>	ORDER RE SUMMARY JUDGMENT HEARING. Signed by Judge Vince Chhabria on 1/9/2018. (vclclS, COURT STAFF) (Filed on 1/9/2018) (Entered: 01/09/2018)
01/09/2018	<u>209</u>	Exhibit List <i>Second Amended Joint Trial Exhibit List</i> by Oakland Bulk & Oversized Terminal, LLC.. (Feldman, Robert) (Filed on 1/9/2018) (Entered: 01/09/2018)
01/09/2018	<u>210</u>	Witness List by City of Oakland <i>Defendants' Joint Designations of Deposition Testimony</i> . (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6)(Long, Christopher) (Filed on 1/9/2018) (Entered: 01/09/2018)
01/09/2018	<u>211</u>	ORDER GRANTING OAKLAND'S MOTION IN LIMINE NO. 1 <u>196</u> by Judge Vince Chhabria (vclclS, COURT STAFF) (Filed on 1/9/2018) (Entered: 01/09/2018)
01/09/2018	<u>212</u>	ORDER DENYING OAKLAND'S MOTION IN LIMINE NO. 2 <u>197</u> by Judge Vince Chhabria (vclclS, COURT STAFF) (Filed on 1/9/2018) (Entered: 01/09/2018)
01/09/2018	<u>213</u>	Witness List by Oakland Bulk & Oversized Terminal, LLC <i>Plaintiff's Deposition & Discovery Designations</i> . (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Feldman, Robert) (Filed on 1/9/2018) (Entered: 01/09/2018)
01/10/2018	<u>214</u>	Order by Judge Vince Chhabria granting <u>198</u> Motion for Pro Hac Vice - Swedlow. (knm, COURT STAFF) (Filed on 1/10/2018) (Entered: 01/10/2018)
01/10/2018	<u>215</u>	Order as Modified by Judge Vince Chhabria granting <u>206</u> Stipulation Regarding Courtroom Equipment.(knm, COURT STAFF) (Filed on 1/10/2018) (Entered: 01/10/2018)
01/10/2018	<u>216</u>	TRANSCRIPT ORDER for proceedings held on 01/10/2018 before Judge Vince Chhabria by Oakland Bulk & Oversized Terminal, LLC, for Court Reporter Debra Pas. (Feldman, Robert) (Filed on 1/10/2018) (Entered: 01/10/2018)
01/10/2018	<u>217</u>	<p>Minute Entry for proceedings held before Judge Vince Chhabria: Pretrial Conference and Motion Hearing held on 1/10/2018 re <u>135</u> , <u>145</u> , and <u>156</u> Motions for Summary Judgment. Commerce Clause question is taken under submission. Trial will proceed on the Breach of Contract question. Bench Trial set for 1/16/2018, at 08:30 AM, 1/17/2018, at 10:00 AM and 1/19/2018, at 08:30 AM before Judge Vince Chhabria. Time limits will be 6 hours per side. Plaintiff is to disclose witnesses to defendants no later than 12:00 p.m. on Friday, 1/12/2018.</p> <p>Total Time in Court: 3 hours 38 minutes.</p> <p>Court Reporter: Debbie Pas.</p> <p>Plaintiff Attorneys: Robert Feldman, David Myre, Meredith McChesney Shaw, and Stephen Swedlow.</p> <p>Defendant Attorneys: Kevin Siegel, Gregory Aker, Timonthy Colvig, and Christopher Long.</p> <p>Intervenor Attorneys: Joanne Spalding, Jessica Yarnall Loarie, Marie Logan, Adrienne Bloch, Heather Lewis, Stacey Leyton, and Colin O'Brien.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tmiS, COURT STAFF) (Date Filed: 1/10/2018) (Entered: 01/10/2018)</p>
01/10/2018	<u>218</u>	TRANSCRIPT ORDER for proceedings held on 01/10/2018 before Judge Vince Chhabria by San Francisco Baykeeper, Sierra Club, for Court Reporter Debra Pas. (Lewis, Heather) (Filed on 1/10/2018) (Entered: 01/10/2018)

01/12/2018	<u>219</u>	ORDER DENYING CROSS-MOTIONS FOR SUMMARY JUDGMENT ON THE BREACH OF CONTRACT CLAIM. Signed by Judge Vince Chhabria on 1/12/2018. (vclclS, COURT STAFF) (Filed on 1/12/2018) (Entered: 01/12/2018)
01/12/2018	<u>220</u>	ORDER RE DISCOVERY DISPUTE. Signed by Judge Vince Chhabria on 1/12/2018 (vclclS, COURT STAFF) (Filed on 1/12/2018) (Entered: 01/12/2018)
01/15/2018	<u>221</u>	Transcript of Proceedings held on 1-10-2017, before Judge Vince Chhabria. Court Reporter/Transcriber Debra L. Pas, CRR, telephone number (415) 431-1477/Email: DebraPas@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re <u>216</u> Transcript Order) Release of Transcript Restriction set for 4/16/2018. (Related documents(s) <u>216</u>) (Pas, Debra) (Filed on 1/15/2018) (Entered: 01/15/2018)
01/15/2018	<u>222</u>	STIPULATION WITH PROPOSED ORDER filed by City of Oakland. (Siegel, Kevin) (Filed on 1/15/2018) (Entered: 01/15/2018)
01/15/2018	<u>223</u>	Exhibit List <i>Second Amended Joint Trial Exhibit List</i> by Oakland Bulk & Oversized Terminal, LLC.. (Feldman, Robert) (Filed on 1/15/2018) (Entered: 01/15/2018)
01/15/2018	<u>224</u>	Brief <i>City's Objection to Extra-Record Evidence to Contradict Record Evidence</i> filed by City of Oakland. (Siegel, Kevin) (Filed on 1/15/2018) (Entered: 01/15/2018)
01/16/2018	<u>225</u>	Minute Entry for proceedings held before Judge Vince Chhabria: Bench Trial held on 1/16/2018.Total Time in Court: 5 hours 1 minute. Court Reporter: Debra Pas. (Attachments: # <u>1</u> Trial Log - Day 1)(knmS, COURT STAFF) (Date Filed: 1/16/2018) (Entered: 01/16/2018)
01/17/2018	<u>226</u>	Declaration of Heather Klein in Support of <u>222</u> STIPULATION WITH PROPOSED ORDER <i>Supplemental Declaration of Heather Klein</i> filed by City of Oakland. (Related document(s) <u>222</u>) (Siegel, Kevin) (Filed on 1/17/2018) (Entered: 01/17/2018)
01/17/2018	<u>227</u>	Minute Entry for proceedings held before Judge Vince Chhabria: Bench Trial - Day 2 held on 1/17/2018.Total Time in Court: 5 hours 15 minutes. Court Reporter: Debra Pas. (Attachments: # <u>1</u> Trial Log - Day 2)(knm, COURT STAFF) (Date Filed: 1/17/2018) (Entered: 01/18/2018)
01/19/2018	<u>228</u>	Transcript of Bench Trial Proceedings, Volume 1, held on 1-16-2018, before Judge Vince Chhabria. Court Reporter/Transcriber Debra L. Pas, CRR, telephone number (415) 431-1477/Email: Debra_Pas@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 4/19/2018. (pasdl50S, COURT STAFF) (Filed on 1/19/2018) (Entered: 01/19/2018)
01/19/2018	<u>229</u>	Transcript of Bench Trial Proceedings held on 1-17-2018, before Judge Vince Chhabria. Court Reporter/Transcriber Debra L. Pas, CRR, telephone number (415) 431-1477/Email: Debra_Pas@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of

		this filing. Release of Transcript Restriction set for 4/19/2018. (pasdl50S, COURT STAFF) (Filed on 1/19/2018) (Entered: 01/19/2018)
01/19/2018	<u>230</u>	Transcript of Bench Trial Proceedings held on 1-19-2018, before Judge Vince Chhabria. Court Reporter/Transcriber Debra L. Pas, CRR, telephone number (415) 431-1477/Email: Debra_Pas@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re <u>216</u> Transcript Order) Release of Transcript Restriction set for 4/19/2018. (Related documents(s) <u>216</u>) (pasdl50S, COURT STAFF) (Filed on 1/19/2018) (Entered: 01/19/2018)
01/19/2018	<u>231</u>	Minute Entry for proceedings held before Judge Vince Chhabria: Bench Trial - Day 3, held and completed on 1/19/2018.Total Time in Court: 5 hours 7 minutes. Court Reporter: Debra Pas. (Attachments: # <u>1</u> Trial Log - Day 3)(knm, COURT STAFF) (Date Filed: 1/19/2018) (Entered: 01/22/2018)
01/22/2018	<u>232</u>	ORDER SETTING POST-TRIAL BRIEFING SCHEDULE. Signed by Judge Vince Chhabria on 1/22/2018. (vclclS, COURT STAFF) (Filed on 1/22/2018) (Entered: 01/22/2018)
01/23/2018		Set Deadlines/Hearings: Motion Hearing set for 3/28/2018 10:00 AM in San Francisco, Courtroom 04, 17th Floor before Judge Vince Chhabria. (knm, COURT STAFF) (Filed on 1/23/2018) (Entered: 01/23/2018)
02/08/2018	<u>233</u>	NOTICE of Appearance by Andrew Edward Kushner (Kushner, Andrew) (Filed on 2/8/2018) (Entered: 02/08/2018)
02/09/2018	<u>234</u>	MOTION for Judgment as a Matter of Law <i>and Memorandum in Support of Motion for Judgment</i> filed by Sierra Club. Motion Hearing set for 3/28/2018 10:00 AM in San Francisco, Courtroom 04, 17th Floor before Judge Vince Chhabria. Responses due by 2/23/2018. Replies due by 3/2/2018. (Attachments: # <u>1</u> Proposed Order)(Finberg, James) (Filed on 2/9/2018) (Entered: 02/09/2018)
02/09/2018	<u>235</u>	Statement <i>City of Oakland's Statement of Position re Defendant-Intervenors' Rule 52(C) Motion for Judgment</i> by City of Oakland. (Siegel, Kevin) (Filed on 2/9/2018) (Entered: 02/09/2018)
02/09/2018	<u>236</u>	Proposed Findings of Fact by City of Oakland <i>Defendants' Proposed Findings of Fact.</i> (Siegel, Kevin) (Filed on 2/9/2018) (Entered: 02/09/2018)
02/09/2018	<u>237</u>	OBJECTIONS to <i>Evidence Introduced at Trial</i> by City of Oakland. (Attachments: # <u>1</u> Exhibit A)(Siegel, Kevin) (Filed on 2/9/2018) (Entered: 02/09/2018)
02/09/2018	<u>238</u>	Proposed Findings of Fact by Oakland Bulk & Oversized Terminal, LLC . (Feldman, Robert) (Filed on 2/9/2018) (Entered: 02/09/2018)
02/09/2018	<u>239</u>	TRIAL BRIEF by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 2/9/2018) (Entered: 02/09/2018)
02/09/2018	<u>240</u>	OBJECTIONS to <i>Evidence Introduced at Trial</i> by Oakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 2/9/2018) (Entered: 02/09/2018)
02/09/2018	<u>241</u>	EXHIBITS <i>Submission of Transcripts for Videos Played During Trial</i> filed byOakland Bulk & Oversized Terminal, LLC. (Attachments: # <u>1</u> Exhibit A to Submission of Transcripts, # <u>2</u> Exhibit B to Submission of Transcripts, # <u>3</u> Exhibit C to Submission of Transcripts)(Feldman, Robert) (Filed on 2/9/2018) (Entered: 02/09/2018)

02/23/2018	<u>242</u>	TRIAL BRIEF <i>Defendant City of Oakland and Defendant-Intervenors' Post Trial Brief</i> by City of Oakland. (Siegel, Kevin) (Filed on 2/23/2018) (Entered: 02/23/2018)
02/23/2018	<u>243</u>	OPPOSITION/RESPONSE (re <u>234</u> MOTION for Judgment as a Matter of Law <i>and Memorandum in Support of Motion for Judgment</i>) filed byOakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 2/23/2018) (Entered: 02/23/2018)
03/02/2018	<u>244</u>	REPLY (re <u>234</u> MOTION for Judgment as a Matter of Law <i>and Memorandum in Support of Motion for Judgment</i>) filed bySierra Club. (Finberg, James) (Filed on 3/2/2018) (Entered: 03/02/2018)
03/22/2018	<u>245</u>	ORDER RE POST-TRIAL HEARING: Motion Hearing set for 4/5/2018 10:00 AM in San Francisco, Courtroom 04, 17th Floor before Judge Vince Chhabria. Signed by Judge Vince Chhabria on 3/22/2018. (knm, COURT STAFF) (Filed on 3/22/2018) (Entered: 03/22/2018)
03/30/2018	<u>246</u>	CLERK'S NOTICE VACATING MOTION HEARING re: 243 Motion For Judgment as a Matter of Law. The Court vacates the motion hearing set for 4/5/2018 at 10:00 a.m. and will address the motion in a written ruling. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (afmS, COURT STAFF) (Filed on 3/30/2018) (Entered: 03/30/2018)
04/26/2018	<u>247</u>	NOTICE of Change In Counsel by Kevin Drake Siegel (Siegel, Kevin) (Filed on 4/26/2018) (Entered: 04/26/2018)
05/03/2018	<u>248</u>	NOTICE by Oakland Bulk & Oversized Terminal, LLC <i>Notice of Withdrawal of Attorney John M. Neukom</i> (Neukom, John) (Filed on 5/3/2018) (Entered: 05/03/2018)
05/15/2018	<u>249</u>	FINDINGS OF FACT AND CONCLUSIONS OF LAW. Signed by Judge Vince Chhabria on 5/15/2018. (knm, COURT STAFF) (Filed on 5/15/2018) (Entered: 05/15/2018)
05/15/2018	<u>250</u>	ORDER RE DISCOVERY DISPUTES. Signed by Judge Vince Chhabria on 5/15/2018. (vclclS, COURT STAFF) (Filed on 5/15/2018) (Entered: 05/15/2018)
05/15/2018	<u>251</u>	ORDER GRANTING STIPULATION <u>222</u> . Signed by Judge Vince Chhabria on 5/15/2018. (vclclS, COURT STAFF) (Filed on 5/15/2018) (Entered: 05/15/2018)
05/15/2018	<u>252</u>	ORDER RE EVIDENTIARY OBJECTIONS. Signed by Judge Vince Chhabria on 5/15/2018. (vclclS, COURT STAFF) (Filed on 5/15/2018) (Entered: 05/15/2018)
05/17/2018	<u>253</u>	ORDER RE TRIAL EXHIBITS. Signed by Judge Vince Chhabria on 5/17/2018. (knmS, COURT STAFF) (Filed on 5/17/2018) (Entered: 05/17/2018)
05/23/2018	<u>254</u>	ORDER DENYING ADMINISTRATIVE MOTION TO FILE UNDER SEAL. Signed by Judge Vince Chhabria on 5/23/2018. (knm, COURT STAFF) (Filed on 5/23/2018) (Entered: 05/23/2018)
05/23/2018	<u>255</u>	JUDGMENT. Signed by Judge Vince Chhabria on 5/23/2018. (knm, COURT STAFF) (Filed on 5/23/2018) (Entered: 05/23/2018)
05/31/2018	<u>256</u>	Exhibit List <i>Joint List of Admitted Trial Exhibits</i> by Oakland Bulk & Oversized Terminal, LLC.. (Feldman, Robert) (Filed on 5/31/2018) (Entered: 05/31/2018)
06/06/2018	<u>257</u>	BILL OF COSTS by Oakland Bulk & Oversized Terminal, LLC. Objections due by 6/20/2018. (Attachments: # <u>1</u> Appendix Notice and Itemization of Costs, # <u>2</u> Declaration of David Myre In Support of Bill of Costs, # <u>3</u> Exhibit A to the Myre Declaration, # <u>4</u> Exhibit B to the Myre Declaration, # <u>5</u> Exhibit C to the Myre Declaration, # <u>6</u> Exhibit D to the Myre Declaration, # <u>7</u> Exhibit E to the Myre Declaration, # <u>8</u> Exhibit F to the Myre Declaration, # <u>9</u> Exhibit G to the Myre Declaration, # <u>10</u> Exhibit H to the Myre

		Declaration, # <u>11</u> Exhibit I to the Myre Declaration, # <u>12</u> Exhibit J to the Myre Declaration, # <u>13</u> Exhibit K to the Myre Declaration, # <u>14</u> Exhibit L to the Myre Declaration)(Feldman, Robert) (Filed on 6/6/2018) (Entered: 06/06/2018)
06/12/2018	<u>258</u>	ORDER re <u>256</u> Joint Admitted Trial Exhibit List filed by Oakland Bulk & Oversized Terminal, LLC. Signed by Judge Vince Chhabria on 6/12/2018. (knm, COURT STAFF) (Filed on 6/12/2018) (Entered: 06/12/2018)
06/13/2018	<u>259</u>	NOTICE of Appearance by Amy Eileen Hoyt (Hoyt, Amy) (Filed on 6/13/2018) (Entered: 06/13/2018)
06/13/2018	<u>260</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by City of Oakland. (Appeal fee of \$505 receipt number 0971-12433871 paid.) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Hoyt, Amy) (Filed on 6/13/2018) (Entered: 06/13/2018)
06/19/2018	<u>261</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by San Francisco Baykeeper, Sierra Club. (Appeal fee of \$505 receipt number 0971-12449029 paid.) (Attachments: # <u>1</u> Exhibit Exhibit A Judgment, # <u>2</u> Exhibit Exhibit B Decision)(O'Brien, Colin) (Filed on 6/19/2018) (Entered: 06/19/2018)
06/28/2018	<u>262</u>	USCA Case Number 18-16105 9th Circuit for <u>260</u> Notice of Appeal filed by City of Oakland. (fabS, COURT STAFF) (Filed on 6/28/2018) (Entered: 06/28/2018)
06/28/2018	<u>263</u>	USCA Case Number 18-16141 9th Circuit for <u>261</u> Notice of Appeal, filed by Sierra Club, San Francisco Baykeeper. (fabS, COURT STAFF) (Filed on 6/28/2018) (Entered: 06/28/2018)
07/12/2018	<u>264</u>	Transcript Designation Form re <u>262</u> USCA Case Number 18-16105 Transcript due by 7/13/2018. (Siegel, Kevin) (Filed on 7/12/2018) (Entered: 07/12/2018)
07/12/2018	<u>265</u>	Transcript Designation Form for proceedings held on 04/20/2017, 07/12/2017, 01/10/2018, 01/16/2018, 01/17/2018, 01/19/2018 before Judge Vince Chhabria, re <u>261</u> Notice of Appeal, Transcript due by 7/19/2018. (Logan, Marie) (Filed on 7/12/2018) (Entered: 07/12/2018)
07/16/2018		Exhibit Location: 3 boxes located on Shelf 80. (fabS, COURT STAFF) (Filed on 7/16/2018) (Entered: 07/16/2018)
08/10/2018	<u>266</u>	Costs Taxed in amount of \$ 96,687.04 Re: <u>257</u> Bill of Costs against City of Oakland. (mkls, COURT STAFF) (Filed on 8/10/2018) (Entered: 08/10/2018)
09/26/2018	<u>267</u>	NOTICE of Change In Counsel by James M. Finberg <i>Notice of Withdrawal of James M. Finberg</i> (Finberg, James) (Filed on 9/26/2018) (Entered: 09/26/2018)
09/26/2018	<u>268</u>	NOTICE of Change In Counsel by James M. Finberg <i>Notice of Association of Counsel and Updated Service List</i> (Finberg, James) (Filed on 9/26/2018) (Entered: 09/26/2018)
09/26/2018	<u>269</u>	NOTICE of Change In Counsel by Stacey M. Leyton <i>Notice of Withdrawal of Stacey M. Leyton</i> (Leyton, Stacey) (Filed on 9/26/2018) (Entered: 09/26/2018)
09/26/2018	<u>270</u>	NOTICE of Change In Counsel by Stacey M. Leyton <i>Notice of Association of Counsel and Updated Service List</i> (Leyton, Stacey) (Filed on 9/26/2018) (Entered: 09/26/2018)
09/26/2018	<u>271</u>	NOTICE of Change In Counsel by Andrew Edward Kushner <i>Notice of Withdrawal of Andrew E. Kushner</i> (Kushner, Andrew) (Filed on 9/26/2018) (Entered: 09/26/2018)
10/04/2018	<u>272</u>	MOTION for Bond <i>Defendant City of Oakland's Notice of Motion, Motion for Waiver of Bond Requirement for Stay of Judgment of Costs on Appeal, and Memorandum in Support</i> filed by City of Oakland. Motion Hearing set for 11/15/2018 10:00 AM in San Francisco, Courtroom 04, 17th Floor before Judge Vince Chhabria. Responses due by

		10/18/2018. Replies due by 10/25/2018. (Attachments: # <u>1</u> Declaration of Adam Benson, # <u>2</u> Proposed Order)(Finberg, James) (Filed on 10/4/2018) (Entered: 10/04/2018)
10/18/2018	<u>273</u>	OPPOSITION/RESPONSE (re <u>272</u> MOTION for Bond <i>Defendant City of Oaklands Notice of Motion, Motion for Waiver of Bond Requirement for Stay of Judgment of Costs on Appeal, and Memorandum in Support</i>) <i>Statement of Nonopposition</i> filed byOakland Bulk & Oversized Terminal, LLC. (Feldman, Robert) (Filed on 10/18/2018) (Entered: 10/18/2018)
11/09/2018	<u>274</u>	Order by Judge Vince Chhabria granting <u>272</u> Motion to Waive Bond Requirement. (knm, COURT STAFF) (Filed on 11/9/2018) (Entered: 11/09/2018)

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