

1 Barbara J. Parker (SBN 69722)  
City Attorney  
2 Otis McGee, Jr. (SBN 71885)  
Chief Assistant City Attorney  
3 Colin Troy Bowen (SBN 152489)  
Supervising Deputy City Attorney  
OAKLAND CITY ATTORNEY  
4 One Frank Ogawa Plaza, 6th Floor  
Oakland, CA 94612  
5 Tel: 510.238.3601 Fax: 510.238.6500

6 Kevin D. Siegel (SBN 194787)  
E-mail: ksiegel@bwslaw.com  
7 Gregory R. Aker (SBN 104171)  
E-mail: gaker@bwslaw.com  
8 Timothy A. Colvig (SBN 114723)  
E-mail: tcolvig@bwslaw.com  
9 Christopher M. Long (SBN 305674)  
E-mail: clong@bwslaw.com  
10 BURKE, WILLIAMS & SORENSEN, LLP  
1901 Harrison Street, Suite 900  
11 Oakland, CA 94612-3501  
Tel: 510.273.8780 Fax: 510.839.9104

12  
13 Attorneys for Defendant  
CITY OF OAKLAND

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

18 OAKLAND BULK & OVERSIZED  
TERMINAL, LLC,

19 Plaintiff,

20 v.

21 CITY OF OAKLAND,

22 Defendant.

23 SIERRA CLUB and SAN FRANCISCO  
24 BAYKEEPER,

25 Defendant-Intervenors.

Case No. 3:16-cv-07014-VC

**STIPULATION AND ~~PROPOSED~~  
ORDER**

Date: January 16, 2018  
Time: 8:30 a.m.  
Ctrm.: No. 2, 17th Floor  
Judge: Honorable Vince Chhabria

1 This Stipulation is entered into by and among Plaintiff Oakland Bulk & Oversized  
2 Terminal, LLC (“OBOT”), Defendant City of Oakland (“City”), and Defendant-Intervenors  
3 Sierra Club and San Francisco Baykeeper (hereinafter, the “Parties” or “Party”). The Parties  
4 hereby stipulate by and through their respective counsel that:

5 1. The declarations of Sharon Hagle, Heather Klein, John Monetta, Christopher  
6 Long, and Sean O’Brien, attached hereto as **Exhibits A through E**, respectively, represent the  
7 testimony that each of these witnesses would have provided on behalf of Defendants if they had  
8 been called to testify at trial.

9 2. Notwithstanding anything to the contrary in those declarations, the documents  
10 listed in **Exhibit F** attached hereto were not uploaded to the Army Base Gateway Redevelopment  
11 Project Website ([http://www2.oaklandnet.com/government/o/CityAdministration/d/project-](http://www2.oaklandnet.com/government/o/CityAdministration/d/project-implementation/OAK038485)  
12 [implementation/OAK038485](http://www2.oaklandnet.com/government/o/CityAdministration/d/project-implementation/OAK038485)) until on or after June 30, 2016, with the exception of items 16 and  
13 17 listed in Exhibit F, which may not have been uploaded at all.

14 3. None of the foregoing stipulations concede that any of the documents that are  
15 contained in Joint Trial Exhibit 640 are being, or should be, admitted for any purpose other than  
16 to show that they were submitted to the City.

17 4. No further stipulations, waivers of rights, or agreements are made by the parties  
18 apart from an agreement to the statements set forth in paragraphs 1 through 3 above.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: January 15, 2018

/s/ Robert P. Feldman

3 Robert P. Feldman (Bar No. 69602)  
4 bobfeldman@quinnemanuel.com  
5 Meredith M. Shaw (Bar No. 284089)  
6 meredithshaw@quinnemanuel.com  
7 David E. Myre (Bar No. 34600)  
8 davidmyre@quinnemanuel.com  
9 Eliyahu Ness (Bar No. 31154)  
10 eliness@quinnemanuel.com  
11 QUINN EMANUEL URQUHART &  
12 SULLIVAN, LLP  
13 555 Twin Dolphin Drive, 5<sup>th</sup> Floor  
14 Redwood Shores, California 94065-2139  
15 Telephone: (650) 801-5000  
16 Facsimile: (650) 801-5100

17 *Attorneys for Plaintiff*  
18 *Oakland Bulk & Oversized Terminal, LLC*

19 Dated: January 15, 2018

/s/ Kevin D. Siegel

20 Kevin D. Siegel (SBN 194787)  
21 E-mail: ksiegel@bwslaw.com  
22 Gregory R. Aker (SBN 104171)  
23 E-mail: gaker@bwslaw.com  
24 Christopher M. Long (SBN 305674)  
25 E-mail: clong@bwslaw.com  
26 BURKE, WILLIAMS & SORENSEN, LLP  
27 1901 Harrison Street, Suite 900  
28 Oakland, CA 94612-3501  
Tel: 510.273.8780 Fax: 510.839.9104

*Attorneys for Defendant*  
*CITY OF OAKLAND Dated: July 12, 2017 /s/ Colin*  
*O'Brien*

Dated: January 15, 2018

/s/ Colin O'Brien

Colin O'Brien (SBN 309413)  
cobrien@earthjustice.org  
Adrienne Bloch (SBN 215471)  
abloch@earthjustice.org  
Heather M. Lewis (SBN. 291933)  
hlewis@earthjustice.org  
EARTHJUSTICE  
50 California Street, Suite 500  
San Francisco, CA 94111  
Tel: (415) 217-2000 / Fax: (415) 217-2040

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Jessica Yarnall Loarie (SBN 252282)  
jessica.yarnall@sienaclub.org  
Joanne Spalding (SBN 169560)  
joanne.spalding@sierraclub.org  
SIERRA CLUB  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
Tel. (415) 977-5636 / Fax. (510) 208-3140  
  
*Attorneys for Defendant-Intervenor Sierra Club*

**ATTESTATION**

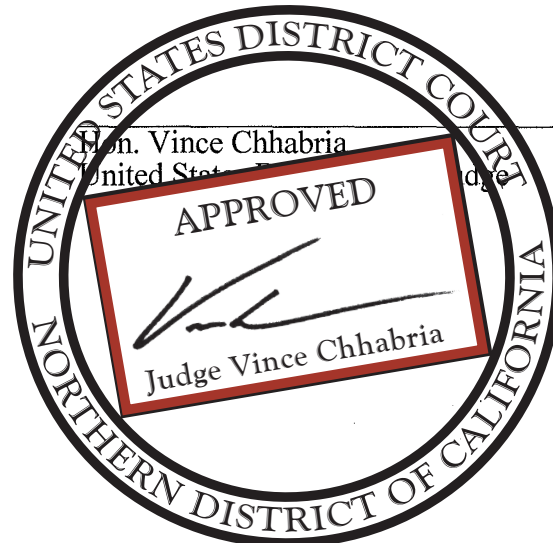
I, Kevin D. Siegel, am the ECF user whose ID and password are being used to file this "Stipulation and [Proposed] Order." Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that ECF users Robert P. Feldman and Colin O'Brien have concurred in the filing of this document.

DATED: January 15, 2018

/s/ Kevin D. Siegel  
Kevin D. Siegel

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: May 15, 2018



# **EXHIBIT A**

1 Barbara J. Parker (SBN 69722)  
City Attorney  
2 Otis McGee, Jr. (SBN 71885)  
Chief Assistant City Attorney  
3 Colin Troy Bowen (SBN 152489)  
Supervising Deputy City Attorney  
4 OAKLAND CITY ATTORNEY  
One Frank Ogawa Plaza, 6th Floor  
5 Oakland, CA 94612  
Tel: 510.238.3601 Fax: 510.238.6500

6 Kevin D. Siegel (SBN 194787)  
E-mail: ksiegel@bwslaw.com  
7 Gregory R. Aker (SBN 104171)  
E-mail: gaker@bwslaw.com  
8 Timothy A. Colvig (SBN 114723)  
E-mail: tcolvig@bwslaw.com  
9 Christopher M. Long (SBN 305674)  
E-mail: clong@bwslaw.com  
10 BURKE, WILLIAMS & SORESENSEN, LLP  
11 1901 Harrison Street, Suite 900  
Oakland, CA 94612-3501  
12 Tel: 510.273.8780 Fax: 510.839.9104

13 Attorneys for Defendant  
CITY OF OAKLAND

14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 OAKLAND BULK & OVERSIZED  
19 TERMINAL, LLC,

20 Plaintiff,

21 v.

22 CITY OF OAKLAND,

23 Defendant.

24 SIERRA CLUB and SAN FRANCISCO  
25 BAYKEEPER,

26 Defendant-Intervenors.  
27  
28

Case No. 3:16-cv-07014-VC

**DECLARATION OF HEATHER  
KLEIN**

Date: January 16, 2018  
Time: 8:30 a.m.  
Ctrm.: No. 2, 17th Floor  
Judge: Honorable Vince Chhabria

1 I, Heather Klein, hereby declare:

2 1. I have personal knowledge of the facts set forth in this declaration and, if called as a  
3 witness, could and would testify competently to such facts under oath.

4 2. I have been continuously employed by the City of Oakland (“City”) as a planner  
5 since April of 2003. My job title is Planner IV at the City’s Bureau of Planning.

6 3. My job duties as a City planner have included assisting with managing the process  
7 associated with the City’s consideration of the potential health and safety impacts related to the  
8 proposal by Plaintiff Oakland Bulk and Oversized Terminal, LLC (“OBOT”) to develop a bulk  
9 goods terminal (“Terminal Project”) at the West Gateway Development Area of the former  
10 Oakland Army Base.

11 4. As part of my job duties, I am familiar with how records related to the Terminal  
12 Project, Ordinance No. 13385 (“Ordinance”), and Resolution No. 86234 (“Resolution”),  
13 including public comments, agendas, meeting minutes, videos of public hearings, and staff  
14 reports of the Oakland City Council, are kept and maintained by the City as permanent records.

15 5. Beginning in December of 2015, when public comments, documents, and public  
16 hearing videos were submitted to or produced by the City relating to the Terminal Project and  
17 commodities that may be stored and handled there, I was responsible for ensuring that those  
18 public comments, videos and documents were made available to the City Council, City Staff and  
19 members of the public by personally uploading and posting them to, or linking to them within, the  
20 City’s dedicated website for the Terminal Project located at  
21 [http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485)  
22 [038485](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485) (the “Army Base Gateway Redevelopment Project Website”), and it was my practice to  
23 do so.

24 6. In that regard, I collected all such information in both electronic and paper form,  
25 scanned the paper copies, and uploaded the information to the Army Base Gateway  
26 Redevelopment Project Website. I periodically reviewed the website to ensure that the  
27 information was, in fact, resident on the website, and confirmed that it was.

28 7. I am familiar with the Agenda Report for the June 27, 2016 City Council hearing,

1 pages 3-4 of which provide the following information related to the the Terminal Project,  
2 Ordinance and Resolution at issue in this matter:

3 the City Council held an informational public hearing on September 21,  
4 2015 to receive written and oral testimony regarding the health and/or  
5 safety effects of coal and types of coal, including coke (which includes  
6 petroleum coke (petcoke), to help inform potential future City Council  
7 actions. The written public hearing comment period ended on or about  
8 October 6, 2015, but comments submitted and received after that date are  
9 considered part of the administrative record and are posted on the City's  
10 website at the following location:

11 (<http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485>)

12 In addition to coal, other potential fossil fuel commodities, which are  
13 listed in the BoD for the OBOT, include fuel oils and gasoline, which are  
14 fossil fuels and have characteristics similar to crude oil per the 2014  
15 Resolution. On May 9, 2016, the City Council held an informational  
16 public hearing to receive written and oral testimony and obtain more  
17 information regarding the health and/or safety effects of transporting and  
18 handling these materials as well as crude oil. The written public hearing  
19 comment period ended on May 16, 2016. Several comments received  
20 related to coal rather than fuel oil, gasoline and crude oil. All comments  
21 received are also part of the administrative record and posted on the City's  
22 website cited above.

23 Additional evidence was submitted before, during and after the above  
24 public hearings and is also part of the administrative record and posted on  
25 the City's website cited above.

26 The statements quoted above are consistent with my understanding, based upon my involvement  
27 in the process.

28 8. Specifically, I was responsible for ensuring that all public comments, documents,  
and public hearing videos submitted in and around the following proceedings and/or categories of  
documents were posted to, or links to access such information (such as videos) were embedded  
in, the Army Base Gateway Redevelopment Project Website (as they appear on the website),  
including, without limitation:

- a. Public Hearing on February 16, 2016 for a Professional Services Contract with Environmental Science Associates (ESA) for the Analysis of Potential Health and Safety Effects of Certain Commodities Proposed At the Oakland Bulk and Oversized Terminal;



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- b. Environmental Science Associates’ (ESA) Draft March 25, 2016 Scope of Work;
- c. Public Hearing on May 3, 2016 for a Professional Services Contract with Environmental Science Associates (ESA) for the Analysis of Potential Health and/or Safety Effects of Certain Commodities Proposed at the Oakland Bulk and Oversized Terminal;
- d. Public Hearing on Fuel Oil, Gasoline and Crude Oil in Oakland on May 9, 2016;
- e. Additional Public Comments or Records Received Regarding Coal;
- f. Special Meeting of the City Council on June 27, 2016; and
- g. City Council Meeting of July 19, 2016.

9. Other staff from the City’s Public Works Department—specifically, City Employee John Monetta—effectuated this same process by working with the City’s Information Technology staff so that all public comments, documents, and public hearing videos related to the Terminal Project were posted to or linked in the Army Base Gateway Redevelopment Project Website for the categories and proceedings prior to and including the September 21, 2015 Public Hearing on Coal in Oakland, and the follow-up submissions related thereto, including, without limitation:

- a. Public Hearing on Coal in Oakland on September 21, 2015, and responses by project proponents and members of the public to follow up on questions posed by the City;
- b. Environmental Review Documents;
- c. Development Agreement; and
- d. Lease Disposition and Development Agreement and Related Agreements.

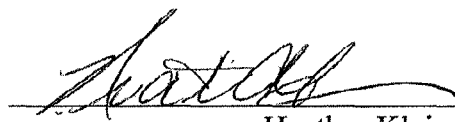
10. To the best of my knowledge, the public comments, documents, and public hearing videos for these proceedings/categories that are posted on the Army Base Gateway Redevelopment Project Website comprise the record related to the Terminal Project, the

1 Ordinance and Resolution;<sup>1</sup> that these records were kept in the ordinary course of the City's  
2 regularly conducted activities; and that the public comments, documents, and public hearing  
3 videos available on the Army Base Gateway Redevelopment Project Website are true and correct  
4 copies of the original records as they are kept in the records of the City of Oakland,

5 11. At some point between April 2017 and November 2017, the City relocated the Army  
6 Base Gateway Redevelopment Project Website to a slightly different directory (from the  
7 "NeighborhoodInvestment" to the "project-implementation" directory), and it is now located at  
8 the following link: [http://www2.oaklandnet.com/government/o/CityAdministration/d/project-  
9 implementation/OAK038485](http://www2.oaklandnet.com/government/o/CityAdministration/d/project-implementation/OAK038485), however the content of the website is the same.

10 I declare under penalty of perjury under the laws of the United States of America that the  
11 foregoing is true and correct.

12 Executed on the 15th day of January, 2018, at Oakland, California.

13  
14   
15 \_\_\_\_\_  
16 Heather Klein

17  
18  
19  
20  
21  
22  
23  
24  
25 <sup>1</sup> With the exception of a binder submitted by the project proponents in advance of the May 9  
26 hearing regarding fuel oil regulations and a Planning Commission Staff Report (and agenda)  
27 dated May 1, 2013, which were available in hard copy in the City's offices, but were  
28 inadvertently not posted on the Project Website. I am informed and believe that the City's  
counsel produced these documents to Plaintiff OBOT in this litigation, Bates-stamped OAK  
0247081—OAK 0250553.

# **EXHIBIT B**

1 Barbara J. Parker (SBN 69722)  
 City Attorney  
 2 Otis McGee, Jr. (SBN 71885)  
 Chief Assistant City Attorney  
 3 Colin Troy Bowen (SBN 152489)  
 Supervising Deputy City Attorney  
 4 OAKLAND CITY ATTORNEY  
 One Frank Ogawa Plaza, 6th Floor  
 5 Oakland, CA 94612  
 Tel: 510.238.3601 Fax: 510.238.6500  
 6  
 Kevin D. Siegel (SBN 194787)  
 7 E-mail: ksiegel@bwslaw.com  
 Gregory R. Aker (SBN 104171)  
 8 E-mail: gaker@bwslaw.com  
 Timothy A. Colvig (SBN 114723)  
 9 E-mail: tcolvig@bwslaw.com  
 Christopher M. Long (SBN 305674)  
 10 E-mail: clong@bwslaw.com  
 BURKE, WILLIAMS & SORENSEN, LLP  
 11 1901 Harrison Street, Suite 900  
 Oakland, CA 94612-3501  
 12 Tel: 510.273.8780 Fax: 510.839.9104  
 13 Attorneys for Defendant  
 CITY OF OAKLAND  
 14

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN FRANCISCO DIVISION

18 OAKLAND BULK & OVERSIZED  
 19 TERMINAL, LLC,

20 Plaintiff,

21 v.

22 CITY OF OAKLAND,

23 Defendant.

24 SIERRA CLUB and SAN FRANCISCO  
 25 BAYKEEPER,

26 Defendant-Intervenors.  
 27  
 28

Case No. 3:16-cv-07014-VC

**DECLARATION OF JOHN  
 MONETTA**

Date: January 16, 2018  
 Time: 8:30 a.m.  
 Ctrm.: No. 2, 17th Floor  
 Judge: Honorable Vince Chhabria

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I, John Monetta, hereby declare:

1. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I have been continuously employed by the City of Oakland (“City”) as a project manager since 2013. My job title is Project Manager I within the City Administrator’s Office. From 2000 to 2013 I was employed by the City as a Program Analyst and Real Estate Agent.

3. My job duties as a City project manager have included assisting with the City’s project management efforts related to the City’s Army Base Gateway Redevelopment Project, including with respect to the proposal by Plaintiff Oakland Bulk and Oversized Terminal, LLC (“OBOT”) to develop a bulk goods terminal (“Terminal Project”) at the West Gateway Development Area of the former Oakland Army Base.

4. As part of my job duties, I am familiar with how records related to the Terminal Project, Ordinance No. 133854 (“Ordinance”), and Resolution No. 86234 (“Resolution”), including public comments, agendas, meeting minutes, and staff reports to the Oakland City Council, have been and are kept and maintained by the City as permanent records.

5. Prior to December of 2015, when public comments, documents, and public hearing videos were submitted to or produced by the City relating to the Terminal Project and commodities that may be stored and handled there, I was responsible for ensuring that those public comments, videos and documents were made available to the City Council, City Staff, and members of the public by causing such information to be uploaded and posted to, or linking to them within, the City’s dedicated webpage for the Terminal Project then located at <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485> (the “Army Base Gateway Redevelopment Project Website”), and it was my practice to do so.

6. In that regard, I collected all such information and provided it in electronic form to staff with instructions to upload it to the Army Base Gateway Redevelopment Project Website. I periodically reviewed the website to ensure that the information was, in fact, resident on the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

website, and confirmed that it was.

7. I am familiar with the Agenda Report for the June 27, 2016 City Council hearing, pages 3-4 of which provide the following information related to the Terminal Project, Ordinance and Resolution at issue in this matter:

the City Council held an informational public hearing on September 21, 2015 to receive written and oral testimony regarding the health and/or safety effects of coal and types of coal, including coke (which includes petroleum coke (petcoke), to help inform potential future City Council actions. The written public hearing comment period ended on or about October 6, 2015, but comments submitted and received after that date are considered part of the administrative record and are posted on the City's website at the following location:

(<http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485>)

In addition to coal, other potential fossil fuel commodities, which are listed in the BoD for the OBOT, include fuel oils and gasoline, which are fossil fuels and have characteristics similar to crude oil per the 2014 Resolution. On May 9, 2016, the City Council held an informational public hearing to receive written and oral testimony and obtain more information regarding the health and/or safety effects of transporting and handling these materials as well as crude oil. The written public hearing comment period ended on May 16, 2016. Several comments received related to coal rather than fuel oil, gasoline and crude oil. All comments received are also part of the administrative record and posted on the City's website cited above.

Additional evidence was submitted before, during and after the above public hearings and is also part of the administrative record and posted on the City's website cited above.

The statements quoted above are consistent with my understanding, based upon my involvement in the process.

8. Specifically, I was responsible for ensuring that all public comments, documents, and public hearing videos submitted in and around the following proceedings and/or categories of documents were posted to, or links to access such information (such as videos) were embedded in, the Army Base Gateway Redevelopment Project Website (as they appear on the website), including, without limitation:

a. Public Hearing on Coal in Oakland on September 21, 2015, and responses by

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

project proponents and members of the public to follow up on questions posed by the City;

- b. Environmental Review Documents;
- c. Development Agreement; and
- d. Lease Disposition and Development Agreement and Related Agreements.

9. Other staff from the City’s Bureau of Planning—specifically, City Employee Heather Klein—became responsible for ensuring that all public comments, documents, and public hearing videos related to the Project were posted to, or links to access such information (such as videos) were embedded in, the Army Base Gateway Redevelopment Project Website for the categories and proceedings from December 2015 up through and including the July 19, 2016 City Council meeting, including, without limitation:

- a. Public Hearing on February 16, 2016 for a Professional Services Contract with Environmental Science Associates (ESA) for the Analysis of Potential Health and Safety Effects of Certain Commodities Proposed At the Oakland Bulk and Oversized Terminal;
- b. Environmental Science Associates’ (ESA) Draft March 25, 2016 Scope of Work;
- c. Public Hearing on May 3, 2016 for a Professional Services Contract with Environmental Science Associates (ESA) for the Analysis of Potential Health and/or Safety Effects of Certain Commodities Proposed at the Oakland Bulk and Oversized Terminal;
- d. Public Hearing on Fuel Oil, Gasoline and Crude Oil in Oakland on May 9, 2016;
- e. Additional Public Comments or Records Received Regarding Coal;
- f. Special Meeting of the City Council on June 27, 2016; and
- g. City Council Meeting of July 19, 2016.

10. To the best of my knowledge, the public comments, documents, and public hearing

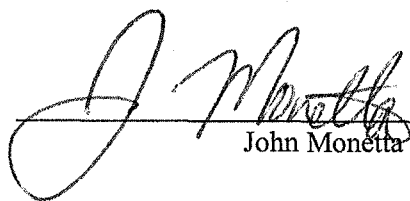
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

videos for these proceedings/categories that are posted on the Army Base Gateway Redevelopment Project Website comprise the record related to the Terminal Project, Ordinance and Resolution prior to and including December 2015; that these records were kept in the ordinary course of the City's regularly conducted activities; and that the public comments, documents, and public hearing videos available on the Army Base Gateway Redevelopment Project Website are true and correct copies of the original records as they are kept in the records of the City of Oakland

11. At some point between April 2017 and November 2017, because of a restructuring of the responsible departments, the City relocated the Army Base Gateway Redevelopment Project Website to a slightly different directory (from the "NeighborhoodInvestment" to the "project-implementation" directory), and it is now located at the following link: <http://www2.oaklandnet.com/government/o/CityAdministration/d/project-implementation/OAK038485>, however the content of the website is the same. I continue to make use of the website in the course of my duties for the City.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 15th day of January, 2018, at Oakland, California.

  
John Monetta



# **EXHIBIT C**

1 Barbara J. Parker (SBN 69722)  
City Attorney  
2 Otis McGee, Jr. (SBN 71885)  
Chief Assistant City Attorney  
3 Colin Troy Bowen (SBN 152489)  
Supervising Deputy City Attorney  
4 OAKLAND CITY ATTORNEY  
One Frank Ogawa Plaza, 6th Floor  
5 Oakland, CA 94612  
Tel: 510.238.3601 Fax: 510.238.6500

6 Kevin D. Siegel (SBN 194787)  
E-mail: ksiegel@bwslaw.com  
7 Gregory R. Aker (SBN 104171)  
E-mail: gaker@bwslaw.com  
8 Timothy A. Colvig (SBN 114723)  
E-mail: tcolvig@bwslaw.com  
9 Christopher M. Long (SBN 305674)  
E-mail: clong@bwslaw.com  
10 BURKE, WILLIAMS & SORENSEN, LLP  
11 1901 Harrison Street, Suite 900  
Oakland, CA 94612-3501  
12 Tel: 510.273.8780 Fax: 510.839.9104

13 Attorneys for Defendant  
14 CITY OF OAKLAND

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 OAKLAND BULK & OVERSIZED  
19 TERMINAL, LLC,

20 Plaintiff,

21 v.

22 CITY OF OAKLAND,

23 Defendant.

24 SIERRA CLUB and SAN FRANCISCO  
25 BAYKEEPER,

26 Defendant-Intervenors.  
27  
28

Case No. 3:16-cv-07014-VC

**DECLARATION OF SHARON I.  
HAGLE**

Date: January 16, 2018  
Time: 8:30 a.m.  
Ctrm.: No. 2, 17th Floor  
Judge: Honorable Vince Chhabria

1 I, Sharon I. Hagle, hereby declare:

2 1. I am a legal secretary with the firm Burke, Williams & Sorensen, LLP, attorneys of  
3 record for Defendant City of Oakland ("City") in the above-entitled action.

4 2. I have personal knowledge of the facts set forth in this declaration and, if called as a  
5 witness, could and would testify competently to such facts under oath.

6 3. At Christopher Long's instruction, I downloaded all documents that were available  
7 and posted to the City's Army Base Gateway Redevelopment Project Website,  
8 [http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485)  
9 [038485](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485) (the "Website"), including documents posted at further hyperlinks on the Website that  
10 related to the Army Base Gateway Redevelopment Project. For example, I downloaded the  
11 "Oakland Army Base Redevelopment Plan," "Aggregate Recycling and Fill Project," "2012  
12 Oakland Army Base Project," "Initial Study/Addendum Appendices," "Standard Conditions of  
13 Approval and Mitigation Monitoring and Reporting Program Report (SCA/MMRP)," and  
14 "Adaptive Reuse Feasibility Studies" documents collected under a hyperlink near the bottom of  
15 the Website that said, "click here to visit a page with Oakland Army Base Environmental Review  
16 documents," as well as copies of staff reports and other City Council meeting-related documents  
17 available at hyperlinks listed under each public hearing date on the Website (for example, the link  
18 for the September 21, 2015 public hearing listed on the Website is  
19 [https://oakland.legistar.com/LegislationDetail.aspx?ID=2386009&GUID=D136342F-CA09-](https://oakland.legistar.com/LegislationDetail.aspx?ID=2386009&GUID=D136342F-CA09-445D-8C24-AE4D3593C7CB)  
20 [445D-8C24-AE4D3593C7CB](https://oakland.legistar.com/LegislationDetail.aspx?ID=2386009&GUID=D136342F-CA09-445D-8C24-AE4D3593C7CB)).

21 4. Also at Mr. Long's instruction, I did not download copies of public hearing videos  
22 posted on the Website under the heading for each public hearing video.

23 5. I completed downloading all documents from the Website, saved them to a USB  
24 flash drive, and provided that flash drive to Mr. Long.

25 ///

26 ///

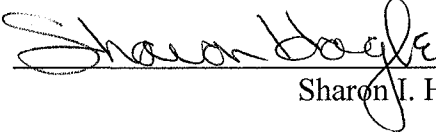
27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 12th day of January, 2018, at Oakland, California.



Sharon I. Hagle

# **EXHIBIT D**

1 Barbara J. Parker (SBN 69722)  
City Attorney  
2 Otis McGee, Jr. (SBN 71885)  
Chief Assistant City Attorney  
3 Colin Troy Bowen (SBN 152489)  
Supervising Deputy City Attorney  
4 OAKLAND CITY ATTORNEY  
One Frank Ogawa Plaza, 6th Floor  
5 Oakland, CA 94612  
Tel: 510.238.3601 Fax: 510.238.6500  
6

Kevin D. Siegel (SBN 194787)  
7 E-mail: ksiegel@bwslaw.com  
Gregory R. Aker (SBN 104171)  
8 E-mail: gaker@bwslaw.com  
Timothy A. Colvig (SBN 114723)  
9 E-mail: tcolvig@bwslaw.com  
Christopher M. Long (SBN 305674)  
10 E-mail: clong@bwslaw.com  
BURKE, WILLIAMS & SORENSEN, LLP  
11 1901 Harrison Street, Suite 900  
Oakland, CA 94612-3501  
12 Tel: 510.273.8780 Fax: 510.839.9104

13 Attorneys for Defendant  
CITY OF OAKLAND  
14

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 OAKLAND BULK & OVERSIZED  
19 TERMINAL, LLC,

20 Plaintiff,

21 v.

22 CITY OF OAKLAND,

23 Defendant.

24 SIERRA CLUB and SAN FRANCISCO  
25 BAYKEEPER,

26 Defendant-Intervenors.  
27  
28

Case No. 3:16-cv-07014-VC

**DECLARATION OF CHRISTOPHER  
LONG**

Date: January 16, 2018  
Time: 8:30 a.m.  
Ctrm.: No. 2, 17th Floor  
Judge: Honorable Vince Chhabria

1 I, Christopher M. Long, hereby declare:

2 1. I am an attorney and an Associate with the firm Burke, Williams & Sorensen, LLP,  
3 attorneys of record for Defendant City of Oakland ("City") in the above-entitled action. I am a  
4 member in good standing of the State Bar of California and the bar of this Court.

5 2. I have personal knowledge of the facts set forth in this declaration and, if called as a  
6 witness, could and would testify competently to such facts under oath.

7 3. I was and remain informed and believed that when public comments, documents,  
8 and public hearing videos were submitted to or produced by the City relating to the proposal by  
9 Plaintiff Oakland Bulk and Oversized Terminal, LLC ("OBOT") to develop a bulk goods terminal  
10 ("Terminal Project") at the West Gateway Development Area of the former Oakland Army Base  
11 and commodities that may be stored and handled there, the City's regular practice was to upload  
12 those documents to the City's dedicated website for the Terminal Project located, at least through  
13 the end of March 2017 (see paragraph 6, below) at the following link:

14 <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK>  
15 [038485](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK) (the "Army Base Gateway Redevelopment Project Website").<sup>1</sup>

16 4. The Army Base Gateway Redevelopment Project Website itself includes hyperlinks  
17 to other locations on the City's website where, for example, items related to City Council  
18 meetings are separately posted, including video, minutes, and agendas for the City Council  
19 meetings (see, e.g., [http://oakland.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=2022](http://oakland.granicus.com/MediaPlayer.php?view_id=2&clip_id=2022),  
20 which includes these items for the June 27, 2016 public hearing).

21 5. The City listed the Army Base Gateway Redevelopment Project Website, among  
22 other City website hyperlinks, in its initial disclosure statement served on Plaintiff's counsel on  
23 February 28, 2017, a true and correct copy of which is attached hereto as **Exhibit A**.

24 6. I instructed Sharon Hagle, a legal secretary of my firm working under my  
25 supervision to download copies of all documents available on the Army Base Gateway

26 \_\_\_\_\_  
27 <sup>1</sup> Note that a set of binders submitted by a project proponent, and a Planning Commission Staff Report (and agenda)  
28 dated May 1, 2013, were available in hard copy in the City's offices, but were inadvertently not posed on the Project  
Website. The City produced these documents to Plaintiff in this litigation as Bates numbers OAK 0247081-OAK  
0250553.

1 Redevelopment Project Website directly from that site. Ms. Hagle had completed this process by  
2 approximately March 29, 2017.

3 7. After Ms. Hagle finished downloading all documents from the Army Base Gateway  
4 Redevelopment Project Website and additional documents located at links available therein, she  
5 saved copies of those documents on a USB flash drive and provided that drive to me.

6 8. In late March and early April 2017, our firm directed Aiken Welch Court Reporters  
7 to prepare certified transcriptions of the relevant portions of the City Council meeting videos  
8 posted on the website, including Agenda Item 7.16 from the July 19, 2016 City Council meeting,  
9 Agenda Item 5 from the June 27, 2016 City Council meeting, Agenda Item 4 from the May 9,  
10 2016 City Council meeting, Agenda Item 13 from the May 3, 2016 City Council meeting, Agenda  
11 Item 11 from the February 16, 2016 City Council meeting, and Agenda Item 4 from the  
12 September 21, 2015 City Council meeting.

13 9. At my instruction, Sean O'Brien of my firm then forwarded these documents saved  
14 from the Army Base Gateway Redevelopment Project Website to our outside vendor, Harbor  
15 Litigation Solutions, which converted any color documents to grayscale and applied Bates  
16 numbers to the documents. The entire set of documents downloaded from the Army Base  
17 Gateway Redevelopment Project Website included documents bearing Bates numbers  
18 OAK0004000 through OAK0046834. I personally reviewed the documents that were returned  
19 with such Bates numbers and confirmed that they were copies of the documents found on the  
20 Army Base Gateway Redevelopment Project Website.

21 10. On June 20, 2017, the City produced all transcriptions of the relevant portions of the  
22 City Council meetings, together with a full and complete copy of the documents posted to the  
23 Army Base Gateway Redevelopment Project Website, to counsel for Plaintiff (the  
24 "Administrative Record"). A true and correct copy of the letter transmitting a copy of the  
25 Administrative Record on an electronic storage device is attached hereto as **Exhibit B**.

26 11. The Administrative Record includes more than 200 documents (e.g., the DA, LDDA  
27 (and related agreements), written documents and communications submitted to or by the City for  
28 consideration by the City Council, draft ordinances and resolutions, consultant reports, record



1 summaries, transcripts of the public hearings, video of the public hearings, proposals, agendas  
2 and agenda reports, public hearing notices, memoranda, and environmental review and other  
3 planning documents).

4 12. I am informed and believe that at some point between April 2017 and November  
5 2017, the City relocated the Army Base Gateway Redevelopment Project Website to a slightly  
6 different directory (from the "NeighborhoodInvestment" to the "project-implementation"  
7 directory), and it is now located at the following link:

8 <http://www2.oaklandnet.com/government/o/CityAdministration/d/project->

9 [implementation/OAK038485](http://www2.oaklandnet.com/government/o/CityAdministration/d/project-implementation/OAK038485). I am familiar with the Army Base Gateway Redevelopment  
10 Project Website as it existed in the initial directory and have reviewed the same website as it  
11 exists at the new directory, and confirmed that they are identical.

12 13. In November and December 2017, at my direction, Paralegal Sean O'Brien compiled  
13 an electronic copy of the Bates numbered Administrative Record set of documents and prepared a  
14 corresponding index of those documents with their Bates numbers, grouped by the following  
15 categories: (1) Resolutions and Ordinances; (2) Staff Reports, Agendas, Notices; (3) Transcripts  
16 and Minutes of All Hearings; (4) Public Comments; (5) Environmental Review Documents; (6)  
17 Notice of Determination and Notice of Exemption for the Ordinance and Resolution; (7)  
18 Agreements, and (8) Miscellaneous. Also at my direction, Mr. O'Brien renamed the electronic  
19 file names for the documents to match the corresponding "AR" number we assigned to each in  
20 our index (for ease of reference), but did not alter or otherwise modify the documents in any  
21 way—each document remains an accurate copy of the same document found on the Army Base  
22 Gateway Redevelopment Project Website.

23 14. On December 28, 2017, I emailed a copy of the Administrative Record index to  
24 Plaintiff's counsel, and explained the City's proposal to submit the entire Administrative Record  
25 as a single trial exhibit. A true and correct copy of this email is attached hereto as **Exhibit C**.


26 15. Plaintiff objected to the City's proposal by email of the same date. A true and  
27 correct copy of this email is attached hereto as **Exhibit D**.

28 16. The City subsequently produced the Administrative Record index and the

1 Administrative Record documents (organized and named to correspond to the index) as Joint  
2 Trial Exhibits 639 and 640, respectively. On January 4, 2018, I sent two copies of the entire  
3 Administrative Record on two USB drives to Plaintiff's counsel. A true and correct copy of my  
4 letter enclosing these USB drives is attached hereto as **Exhibit E**. Also on January 4, 2018,  
5 Kevin Siegel emailed a copy of the Administrative Record index to plaintiff's counsel and  
6 provided plaintiff's counsel with a link to download an electronic copy of the entire  
7 Administrative Record. A true and correct copy of this email is attached hereto as **Exhibit F**.

8 I declare under penalty of perjury under the laws of the United States of America that the  
9 foregoing is true and correct.

10 Executed on the 15th day of January, 2018, at Oakland, California.

11   
12 \_\_\_\_\_  
13 Christopher M. Long

**EXHIBIT A**

**TO LONG DECLARATION**

1 Barbara J. Parker (SBN 69722)  
City Attorney  
2 Otis McGee, Jr. (SBN 71885)  
Chief Assistant City Attorney  
3 Colin Troy Bowen (SBN 152489)  
Supervising Deputy City Attorney  
4 OAKLAND CITY ATTORNEY  
One Frank Ogawa Plaza, 6th Floor  
5 Oakland, CA 94612  
Tel: 510.238.3601 Fax: 510.238.6500  
6

Kevin D. Siegel (SBN 194787)  
7 E-mail: ksiegel@bwslaw.com  
Gregory R. Aker (SBN 104171)  
8 E-mail: gaker@bwslaw.com  
Christopher M. Long (SBN 305674)  
9 E-mail: clong@bwslaw.com  
BURKE, WILLIAMS & SORENSEN, LLP  
10 1901 Harrison Street, Suite 900  
Oakland, CA 94612-3501  
11 Tel: 510.273.8780 Fax: 510.839.9104

12 Attorneys for Defendant  
13 CITY OF OAKLAND

14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION  
18

19 OAKLAND BULK & OVERSIZED  
TERMINAL, LLC,

20 Plaintiff,

21 v.

22 CITY OF OAKLAND,

23 Defendant.

Case No. 3:16-cv-07014-VC

**DEFENDANT CITY OF OAKLAND'S  
INITIAL DISCLOSURE STATEMENT**

**[F.R.C.P. 26 (a)(1)]**

24  
25 Defendant City of Oakland (the "City") hereby provides its initial disclosures pursuant to  
26 Rule 26(a)(1).

27 The following disclosures are made based on the information reasonably available to the  
28 City as of the date below. By making these disclosures, the City does not represent that it is

1 identifying every document, tangible thing, or witness possibly relevant to this lawsuit. Rather,  
2 these disclosures represent the City's good faith effort to identify information subject to the  
3 disclosure requirements under Rule 26(a)(1).

4 Furthermore, the following disclosures are made without, in any way, waiving:

- 5 1. The right to object to production of any document or tangible thing on the grounds  
6 of competency, relevancy, materiality, hearsay, undue burden, privilege, the work product  
7 doctrine, or on any other proper ground to the use of any such information for any purposes, in  
8 whole or in part, in any subsequent stage of proceeding in this action or in any other action;
- 9 2. The right to object on any and all grounds, at any time, to any other discovery  
10 proceeding involving or relating to the subject matter of these disclosures; and
- 11 3. The right to supplement and/or amend this list during or at the close of discovery  
12 in this action.

13 All of the disclosures set forth below are made subject to these comments and  
14 qualifications.

15 **I. WITNESSES**

16 The City identifies any and all witnesses disclosed by Plaintiff Oakland Bulk &  
17 Oversized Terminal, LLC ("Plaintiff"). In addition, the City Clerk maintains the City's  
18 official records, which include the relevant documents presented to, considered by, adopted  
19 and/or by the City Council at various public meetings, which documents are discussed in the  
20 Plaintiff's Complaint, the City's pending Motion to Dismiss (set for hearing on April 20,  
21 2017), and the Sierra Club's motions to intervene and to dismiss (also set for hearings on  
22 April 20, 2017).

23 See the City Clerk's home page:

24 <http://www2.oaklandnet.com/government/o/CityClerk/index.htm>.

25 See also the City' Clerk's Legisar InSite webpage for document management:

26 <http://www2.oaklandnet.com/government/o/CityClerk/o/RecordsManagement/OAK022568>.

27 The City reserves the right to supplement this disclosure as permitted by Rule  
28 26(e)(1).

1 **II. DOCUMENTS AND THINGS**

2 The City hereby identifies the following documents and things that it may use to  
3 support its claims and defenses in this action:

4 1. The Development Agreement by and between City of Oakland and Prologis CCIG  
5 Oakland Global, LLC Regarding the Property and Project Known as "Gateway  
6 Development/Oakland Global", dated July 16, 2013 and recorded in the official records of the  
7 County of Alameda, State of California on February 16, 2016 as Instrument No. 2016-038035, a  
8 true and correct copy of which was attached as Exhibit A to the City's Request for Judicial Notice  
9 in Support of Defendant City of Oakland's Rule 12(b)(6) Motion to Dismiss ("RJN") (Dkt. 20-1);

10 2. City of Oakland Ordinance No. 13385 C.M.S., an Ordinance (1) Amending the  
11 Oakland Municipal Code to Prohibit the Storage and Handling of Coal and Coke at Bulk Material  
12 Facilities or Terminals Throughout the City of Oakland and (2) Adopting California  
13 Environmental Quality Act Exemption Findings, adopted July 19, 2016, a true and correct copy  
14 of which was attached as Exhibit B to the City's RJN (Dkt. 20-2);

15 3. Oakland City Council Resolution No. 86234 C.M.S., a Resolution (A) Applying  
16 Ordinance No. [13385] C.M.S. [an Ordinance (1) Amending the Oakland Municipal Code to  
17 Prohibit the Storage and Handling of Coal and Coke at Bulk Material Facilities or Terminals  
18 Throughout the City of Oakland and (2) Adopting California Environmental Quality Act (CEQA)  
19 Exemption Findings] to the Proposed Oakland Bulk and Oversized Terminal Located in the West  
20 Gateway Development Area of the Former Oakland Army Base; and (B) Adopting CEQA  
21 Exemption Findings and Relying on the Previously Certified 2002 Army Base Redevelopment  
22 Plan EIR and 2012 Addendum, adopted June 27, 2016, a true and correct copy of which was  
23 attached as Exhibit C to the City's RJN (Dkt. 20-3);

24 4. The Memorandum of Army Base Gateway Redevelopment Project Ground Lease  
25 for West Gateway dated February 16, 2016 (with exhibits), recorded in the official records of the  
26 County of Alameda, State of California on February 16, 2016 as Instrument No. 2016-038036,  
27 and that certain Army Base Gateway Redevelopment Project Ground Lease for West Gateway  
28 between the City and Oakland Bulk and Oversized Terminal, LLC (without exhibits),

1 incorporated therein by reference, true and correct copies of which were attached as Exhibit D to  
2 the City's RJN (Dkt. 20-4);

3 5. Chapter 17.138 of the City of Oakland Planning Code (entitled Development  
4 Agreement Procedure), a true and correct copy of which was attached as Exhibit E to the City's  
5 RJN (Dkt. 20-5);

6 6. California Senate Bill No. 674 (Stats. 2005, Ch. 664), the "Oakland Army Base  
7 Public Trust Exchange Act", enacted October 7, 2005 a true and correct copy of which was  
8 attached as Exhibit F to the City's RJN (Dkt. 20-6);

9 7. State of California Patents regarding "Public Trust Parcels F, G, and H" and  
10 "Public Trust Parcel E", dated June 30, 2006 and recorded in the official records of the County of  
11 Alameda, State of California on August 7, 2016 as Instrument Nos. 2006-301849 and 2006-  
12 301850, respectively, true and correct copies of which were attached as Exhibit G to the City's  
13 RJN (Dkt. 20-7);

14 8. The Memorandum of Lease Disposition and Development Agreement dated  
15 October 23, 2012, recorded in the official records of the County of Alameda, State of California  
16 on December 4, 2012 as Instrument No. 2012-403243, and that certain Lease Disposition and  
17 Development Agreement between the City and The Oakland Redevelopment Successor Agency  
18 and Prologis CCIG Oakland Global, LLC, incorporated therein by reference, copies of which are  
19 produced concurrently herewith;

20 9. Oakland City Council Resolution No. 85054 C.M.S., a Resolution to Oppose  
21 Transportation of Hazardous Fossil Fuel Materials, including Crude Oil, Coal, and Petroleum  
22 Coke, Along California Waterways, Through Densely Populated Areas, Through the City of  
23 Oakland, adopted June 17, 2014, a copy of which is produced concurrently herewith;

24 10. The report entitled, "Analysis of Health Impacts and Safety Risks and Other  
25 Issues/Concerns Related to the Transport, Handling, Transloading, and Storage of Coal and/or  
26 Petroleum Coke (Petcoke) in Oakland and at the Proposed Oakland Bulk & Oversized Terminal"  
27 prepared by Zoe Chafe, Ph.D., MPH, for Councilmember Dan Kalb, dated June 22, 2016 (the  
28 "Kalb Report"), together with the documents cited in Volumes 1-3 thereof, copies of which are

1 produced concurrently herewith;

2 11. The Agenda Memorandum dated June 23, 2016 from Oakland City  
3 Councilmember Dan Kalb to Members of the Oakland City Council and City Administrator  
4 Sabrina Landreth regarding the Kalb Report and an Ordinance Amending the Oakland  
5 Municipal Code to Prohibit the Storage and Handling of Coal and Coke at Bulk Material  
6 Facilities or Terminals Throughout the City of Oakland, a copy of which is produced  
7 concurrently herewith;

8 12. The report entitled, "Report on the Health and/or Safety Impacts Associated  
9 with the Transport, Storage, and/or Handling of Coal and/or Coke in Oakland, Including at  
10 the Proposed Oakland Bulk and Oversized Terminal in the West Gateway Area of the Former  
11 Oakland Army Base" dated June 23, 2016, prepared by Environmental Science Associates for  
12 the City of Oakland, a copy of which is produced concurrently herewith;

13 13. The Oakland City Council Agenda Report dated June 23, 2016 from Assistant  
14 City Administrator Claudia Cappio to City Administrator Sabrina B. Landreth regarding  
15 Public Hearing to Consider a Report and Recommendation for Options to Address Coal and  
16 Coke Issues, a copy of which is produced concurrently herewith;

17 14. The Oakland City Council Meeting Agenda for the June 27, 2016 City Council  
18 meeting, a copy of which is produced concurrently herewith;

19 15. The Oakland City Council Meeting Minutes for the June 27, 2016 City Council  
20 meeting, a copy of which is produced concurrently herewith;

21 16. The letter dated June 28, 2016 from Assistant City Administrator Claudia  
22 Cappio to Prologis CCIG Oakland Global, LLC and Oakland Bulk and Oversized Terminal,  
23 LLC regarding A Resolution (A) Applying Ordinance No. \_\_\_ C.M.S. [An Ordinance  
24 (1) Amending The Oakland Municipal Code to Prohibit the Storage and Handling of Coal and  
25 Coke at Bulk Material Facilities or Terminals Throughout the City of Oakland and  
26 (2) Adopting California Environmental Quality Act (CEQA) Exemption Findings] to the  
27 Proposed Oakland Bulk and Oversized Terminal Located in the West Gateway Development  
28 Area of the Former Oakland Army Base; and (B) Adopting CEQA Exemption Findings and



1 Relying on the Previously Certified 2002 Army Base Redevelopment Plan EIR and 2012  
2 Addendum, a copy of which is produced concurrently herewith;

3 17. The letter dated July 21, 2016 from Assistant City Administrator Claudia  
4 Cappio to Prologis CCIG Oakland Global, LLC and Oakland Bulk and Oversized Terminal,  
5 LLC regarding An Ordinance (1) Amending the Oakland Municipal Code to Prohibit the  
6 Storage and Handling of Coal and Coke at Bulk Material Facilities or Terminals Throughout  
7 the City of Oakland and (2) Adopting California Environmental Quality Act (CEQA)  
8 Exemption Findings, a copy of which is produced concurrently herewith;

9 18. The letter dated August 2, 2016 from Assistant City Administrator Claudia  
10 Cappio to Prologis CCIG Oakland Global, LLC and Oakland Bulk and Oversized Terminal,  
11 LLC regarding An Ordinance (1) Amending the Oakland Municipal Code to Prohibit the  
12 Storage and Handling of Coal and Coke at Bulk Material Facilities or Terminals Throughout  
13 the City of Oakland and (2) Adopting California Environmental Quality Act (CEQA)  
14 Exemption Findings (Ordinance No. 13385 C.M.S.), a copy of which is produced  
15 concurrently herewith;

16 19. The Filed CEQA Combined Notice of Determination and Exemption for  
17 Resolution 86234 C.M.S., a copy of which is produced concurrently herewith;

18 20. The Filed CEQA Notice of Exemption for Ordinance No. 13385 C.M.S., a copy  
19 of which is produced concurrently herewith;

20 21. Legislation and related documents regarding the Lease Disposition and  
21 Development Agreement referenced in number 8, above, posted on the City's website and  
22 available at the following locations:

23 [https://oakland.legistar.com/LegislationDetail.aspx?ID=1201501&GUID=C5079002-881C-  
24 424E-9D43-10CB513565BB&Options=ID|Text|&Search,](https://oakland.legistar.com/LegislationDetail.aspx?ID=1201501&GUID=C5079002-881C-424E-9D43-10CB513565BB&Options=ID|Text|&Search,)

25 [https://oakland.legistar.com/LegislationDetail.aspx?ID=1134209&GUID=DCF42791-D49A-  
26 4D62-8C80-07BFD2942325&Options=ID|Text|&Search,](https://oakland.legistar.com/LegislationDetail.aspx?ID=1134209&GUID=DCF42791-D49A-4D62-8C80-07BFD2942325&Options=ID|Text|&Search,)

27 [https://oakland.legistar.com/LegislationDetail.aspx?ID=1524295&GUID=31DB84BE-B9DC-  
28 4C41-8BC8-E07BCAB1C99C&Options=ID%7cText%7c&Search, and](https://oakland.legistar.com/LegislationDetail.aspx?ID=1524295&GUID=31DB84BE-B9DC-4C41-8BC8-E07BCAB1C99C&Options=ID%7cText%7c&Search,)

1 [https://oakland.legistar.com/LegislationDetail.aspx?ID=2071160&GUID=2D0D3782-B7A6-](https://oakland.legistar.com/LegislationDetail.aspx?ID=2071160&GUID=2D0D3782-B7A6-40BA-8BBC-B75E85BE394D&Options=ID|Text|&Search)  
2 [40BA-8BBC-B75E85BE394D&Options=ID|Text|&Search](https://oakland.legistar.com/LegislationDetail.aspx?ID=2071160&GUID=2D0D3782-B7A6-40BA-8BBC-B75E85BE394D&Options=ID|Text|&Search)

3 22. Additional legislation and documents related to the Army Base Gateway  
4 Redevelopment Project posted on the City's website and available at the following locations:

5 [http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485)  
6 [038485,](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485)

7 [http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/Oa](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008820)  
8 [klandArmyBase/DOWD008820,](http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008820)

9 [http://www2.oaklandnet.com/government/o/PBN/OurServices/Application/DOWD009157,](http://www2.oaklandnet.com/government/o/PBN/OurServices/Application/DOWD009157)

10 [https://oakland.legistar.com/LegislationDetail.aspx?ID=1134198&GUID=18F3FB48-E8B2-](https://oakland.legistar.com/LegislationDetail.aspx?ID=1134198&GUID=18F3FB48-E8B2-4DDA-885C-EC372215D015&Options=ID|Text|&Search)  
11 [4DDA-885C-EC372215D015&Options=ID|Text|&Search,](https://oakland.legistar.com/LegislationDetail.aspx?ID=1134198&GUID=18F3FB48-E8B2-4DDA-885C-EC372215D015&Options=ID|Text|&Search)

12 [https://oakland.legistar.com/LegislationDetail.aspx?ID=1427119&GUID=9122B74A-273F-](https://oakland.legistar.com/LegislationDetail.aspx?ID=1427119&GUID=9122B74A-273F-4343-B954-F848BC668685&Options=ID|Text|&Search)  
13 [4343-B954-F848BC668685&Options=ID|Text|&Search,](https://oakland.legistar.com/LegislationDetail.aspx?ID=1427119&GUID=9122B74A-273F-4343-B954-F848BC668685&Options=ID|Text|&Search)

14 [https://oakland.legistar.com/LegislationDetail.aspx?ID=1427118&GUID=8DAD20F7-91E0-](https://oakland.legistar.com/LegislationDetail.aspx?ID=1427118&GUID=8DAD20F7-91E0-4E6E-8D78-B9CB3DD4AB0F&Options=ID|Text|&Search)  
15 [4E6E-8D78-B9CB3DD4AB0F&Options=ID|Text|&Search,](https://oakland.legistar.com/LegislationDetail.aspx?ID=1427118&GUID=8DAD20F7-91E0-4E6E-8D78-B9CB3DD4AB0F&Options=ID|Text|&Search) and

16 [https://oakland.legistar.com/LegislationDetail.aspx?ID=848574&GUID=F558CB45-670C-4202-](https://oakland.legistar.com/LegislationDetail.aspx?ID=848574&GUID=F558CB45-670C-4202-8229-B45F25F29D23&Options=ID|Text|&Search)  
17 [8229-B45F25F29D23&Options=ID|Text|&Search.](https://oakland.legistar.com/LegislationDetail.aspx?ID=848574&GUID=F558CB45-670C-4202-8229-B45F25F29D23&Options=ID|Text|&Search)

18 The City reserves the right to supplement this disclosure as permitted by Rule 26(e)(1).

19 **III. DAMAGES**

20 The City has not filed a claim for affirmative relief, but reserves its right to do so,an  
21 also to seek its attorney's fees and costs in this matter, in an amount to be determined at a  
22 future time pursuant to applicable law.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

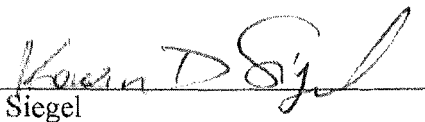
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. INSURANCE**

Not applicable. The Complaint does not allege any claim or prayer for damages, and the City is not tendering the defending of this suit to any insurer.

Dated: February 28, 2017

BURKE, WILLIAMS & SORENSEN, LLP

By:   
Kevin D. Siegel  
Gregory R. Aker  
Christopher M. Long  
Attorneys for Defendant  
CITY OF OAKLAND

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Sharon Hagle, 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 February 28, 2017, I served a copy of the within document(s):

**DEFENDANT CITY OF OAKLAND'S INITIAL DISCLOSURE STATEMENT**

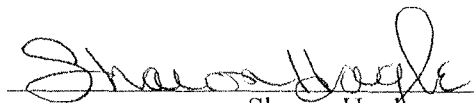
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Oakland, California addressed as set forth below.
- by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a \_\_\_\_\_ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

**SEE SERVICE LIST ATTACHED**

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 that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 28, 2017, at Oakland, California.

  
 \_\_\_\_\_  
 Sharon Hagle

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SERVICE LIST

David Edward Myre, III  
Eliyahu Ness  
Robert P. Feldman  
Quinn Emanuel Urquhart Sullivan  
555 Twin Dolphin Dr., 5th Floor  
Redwood Shores, CA 94065

Meredith McChesney Shaw  
Quinn Emanuel Urquhart Sullivan LLP  
50 California Street, 22nd Floor  
San Francisco, CA 94111

Colin Casey O'Brien  
Adrienne L. Bloch  
Heather Mudford Lewis  
Earthjustice  
50 California Street Suite 500  
San Francisco, CA 94111

Barbara J. Parker, City Attorney  
Otis McGee, Jr., Chief Assistant City Attorney  
Colin Troy Bowen, Supervising Deputy City Attorney  
OAKLAND CITY ATTORNEY  
One Frank Ogawa Plaza, 6th Floor  
Oakland, CA 94612

# **EXHIBIT B**

**TO LONG DECLARATION**



1901 Harrison Street - Suite 900  
Oakland, California 94612-3501  
voice 510.273.8780 - fax 510.839.9104  
www.bwslaw.com

Direct No.: 510.903.8806  
ksiegel@bwslaw.com

June 20, 2017

**VIA OVERNIGHT COURIER**

Robert P. Feldman  
David Myre  
Quinn Emanuel Urquhart & Sullivan, LLP  
555 Twin Dolphin Drive, 5th Floor  
Redwood Shores, CA 94065-2139

Meredith M. Shaw  
Quinn Emanuel Urquhart & Sullivan, LLP  
50 California Street, 22nd Flr.  
San Francisco, CA 94111

Re: *Oakland Bulk & Oversized Terminal v. City of Oakland*  
U.S.D.C. - No. Dist. of California, Case No. 16-CV-7014

Dear Counsel:

Enclosed please find an electronic storage device with non-privileged documents responsive to Plaintiff Oakland Bulk & Oversized Terminal, LLC's ("OBOT") First Set of Requests for Production ("RFP"). The enclosed documents bear bates numbers OAK0001 through OAK3012 and OAK0004000 through OAK0046834, and are responsive to RFP numbers 1-16. Also included are non-privileged documents responsive to OBOT's subpoena to Dr. Zoe A. Chafe, Ph.D., dated April 28, 2017, which bear Bates numbers ZAC000001 through ZAC006538.

We are producing these documents with the parties' understanding and agreement that the documents are for attorneys eyes only since Judge Chhabria has yet to sign the proposed/stipulated protective order (which understanding and agreement was reached by email exchanges between Greg Aker and David Myre, bearing the subject line "draft PTO, Clawback").

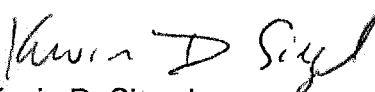
We are continuing to collect and review documents in response to your discovery demands, for anticipated subsequent production. In addition, we will provide a privilege log at a later date.



Robert P. Feldman  
Meredith M. Shaw  
June 20, 2017  
Page 2

Sincerely,

Burke, Williams & Sorensen, LLP

  
Kevin D. Siegel

KDS:cs

Enclosure

cc: Colin O'Brien, Earthjustice (with enclosure)  
Jessica Yarnall Loarie, Sierra Club (with enclosure)  
Colin T. Bowen, Oakland City Attorney's Office (with enclosure)

OAK #4828-0192-9546 v2



**EXHIBIT C**

**TO LONG DECLARATION**

**Long, Christopher M.**

---

**From:** Long, Christopher M.  
**Sent:** Thursday, December 28, 2017 11:05 AM  
**To:** Bob Feldman; Meredith Shaw; 'David Myre'; Eli Ness; CCIGQE  
**Cc:** 'Jessica Yarnall Loarie'; 'Colin O'Brien'; Joanne Spalding  
(joanne.spalding@SIERRACLUB.ORG); Adrienne Bloch; 'Heather Lewis'; Marie Logan;  
Siegel, Kevin D.; Aker, Gregory R.; Colvig, Timothy A.; Seals, Celestine O.; Hagle, Sharon;  
O'Brien, Sean; Deborah Ann Sivas; Helen Kang; 'Isaac Cheng'  
**Subject:** OBOT v. City of Oakland - Record of Council Proceedings  
**Attachments:** OBOT v. City of Oakland- Index of City Records.docx

Counsel:

In light of the voluminous amount of documents submitted to the City during the public hearing process related to the Ordinance and Resolution, which were prepared by OBOT (and its representatives), the City, and members of the public, we propose to seek permission from the Court to submit the entire record of the City Council's proceedings as a single trial exhibit on a flash drive (with a corresponding manual filing notification) to avoid the need to print out and submit more than 40,000 pages of material. We also plan to submit the attached index (which mirrors the folders and file names on the flash drive) for ease of reference. The index also lists the corresponding Bates numbers for each document from the City's production.

For example, this will allow the parties to quickly refer to all sections of the Basis of Design (AR0135-AR0148 on the index, which alone is voluminous) without the need to print out and file hard copies of these documents. This will also allow the parties to easily refer to the ordinance and resolution, meeting agendas, staff reports, transcripts of public hearings, meeting minutes, etc.

Of course, the parties are free to include different versions of the documents appearing in the record as separate trial exhibits on our joint trial exhibit list (which we are separately preparing and hope to have for you shortly) but this approach will hopefully reduce the amount of exhibits that we will need to file.

Please let us know if you agree.

Sincerely,

**Christopher M. Long | Associate**  
1901 Harrison Street, Suite 900 | Oakland, CA 94612-3501  
d - 510.903.8848 | t - 510.273.8780 | f - 510.839.9104  
clong@bwslaw.com | vCard | bwslaw.com



The information contained in this e-mail message is intended only for the CONFIDENTIAL use of the designated addressee named above. The information transmitted is subject to the attorney-client privilege and/or represents confidential attorney work product. Recipients should not file copies of this email with publicly accessible records. If you are not the designated addressee named above or the authorized agent responsible for delivering it to the designated addressee, you received this document through inadvertent error and any further review, dissemination, distribution or copying of this communication by you or anyone else is strictly prohibited. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING THE SENDER NAMED ABOVE AT 800.333.4297. Thank you.

# **EXHIBIT D**

**TO LONG DECLARATION**

**Long, Christopher M.**

---

**From:** David Myre <davidmyre@quinnemanuel.com>  
**Sent:** Thursday, December 28, 2017 1:43 PM  
**To:** Colin O'Brien; Long, Christopher M.; Bob Feldman; Meredith Shaw; Eli Ness; CCIGQE  
**Cc:** Jessica Yarnall Loarie; Joanne Spalding (joanne.spalding@SIERRACLUB.ORG); Adrienne Bloch; Heather Lewis; Marie Logan; Siegel, Kevin D.; Aker, Gregory R.; Colvig, Timothy A.; Seals, Celestine O.; Hagle, Sharon; O'Brien, Sean; Deborah Ann Sivas; Helen Kang; Isaac Cheng  
**Subject:** RE: OBOT v. City of Oakland - Record of Council Proceedings

Christopher,

OBOT objects to the City's proposal. The City's proposed "exhibit" would consist of 228 separate, discrete documents that vary widely in terms of their authors, source, substance, and most importantly, admissibility at trial. Many are objectionable on multiple grounds, and absent testimony or other evidence supporting their admissibility, may not properly be admitted as evidence in this proceeding. The City may, of course, include the individual documents it intends to offer on the parties' joint exhibit list, and OBOT will provide specific objections as appropriate for each. However, we would oppose any request that the Court permit all 228 of these documents to be admitted as a single trial exhibit.

Regards,  
David

**David E. Myre**  
Quinn Emanuel Urquhart & Sullivan LLP  
Silicon Valley | Direct: (650) 801-5080

---

**From:** Colin O'Brien [mailto:cobrien@earthjustice.org]  
**Sent:** Thursday, December 28, 2017 12:04 PM  
**To:** Long, Christopher M. <CLong@bwslaw.com>; Bob Feldman <bobfeldman@quinnemanuel.com>; Meredith Shaw <meredithshaw@quinnemanuel.com>; David Myre <davidmyre@quinnemanuel.com>; Eli Ness <eliness@quinnemanuel.com>; CCIGQE <ccigqe@quinnemanuel.com>  
**Cc:** Jessica Yarnall Loarie <jessica.yarnall@sierraclub.org>; Joanne Spalding (joanne.spalding@SIERRACLUB.ORG) <joanne.spalding@SIERRACLUB.ORG>; Adrienne Bloch <abloch@earthjustice.org>; Heather Lewis <hlewis@earthjustice.org>; Marie Logan <mlogan@earthjustice.org>; Siegel, Kevin D. <KSiegel@bwslaw.com>; Aker, Gregory R. <GAker@bwslaw.com>; Colvig, Timothy A. <TColvig@bwslaw.com>; Seals, Celestine O. <CSeals@bwslaw.com>; Hagle, Sharon <SHagle@bwslaw.com>; O'Brien, Sean <sobrien@bwslaw.com>; Deborah Ann Sivas <dsivas@stanford.edu>; Helen Kang <hkang@ggu.edu>; Isaac Cheng <isaac.cheng@stanford.edu>  
**Subject:** RE: OBOT v. City of Oakland - Record of Council Proceedings

Christopher –

The Intervenor has no objection to your proposed approach.

Best,  
Colin

**From:** Long, Christopher M. [mailto:CLong@bwslaw.com]

**Sent:** Thursday, December 28, 2017 11:06 AM

**To:** Bob Feldman <bobfeldman@quinnemanuel.com>; Meredith Shaw <meredithshaw@quinnemanuel.com>; David Myre <davidmyre@quinnemanuel.com>; Eli Ness <eliness@quinnemanuel.com>; CCIGQE <ccigqe@quinnemanuel.com>

**Cc:** Jessica Yarnall Loarie <jessica.yarnall@sierraclub.org>; Colin O'Brien <cobrien@earthjustice.org>; Joanne Spalding (joanne.spalding@SIERRACLUB.ORG) <joanne.spalding@SIERRACLUB.ORG>; Adrienne Bloch <abloch@earthjustice.org>; Heather Lewis <hlewis@earthjustice.org>; Marie Logan <mlogan@earthjustice.org>; Siegel, Kevin D.

<KSiegel@bwslaw.com>; Aker, Gregory R. <GAker@bwslaw.com>; Colvig, Timothy A. <TColvig@bwslaw.com>; Seals, Celestine O. <CSeals@bwslaw.com>; Hagle, Sharon <SHagle@bwslaw.com>; O'Brien, Sean <sobrien@bwslaw.com>; Deborah Ann Sivas <dsivas@stanford.edu>; Helen Kang <hkang@ggu.edu>; Isaac Cheng <isaac.cheng@stanford.edu>

**Subject:** OBOT v. City of Oakland - Record of Council Proceedings

Counsel:

In light of the voluminous amount of documents submitted to the City during the public hearing process related to the Ordinance and Resolution, which were prepared by OBOT (and its representatives), the City, and members of the public, we propose to seek permission from the Court to submit the entire record of the City Council's proceedings as a single trial exhibit on a flash drive (with a corresponding manual filing notification) to avoid the need to print out and submit more than 40,000 pages of material. We also plan to submit the attached index (which mirrors the folders and file names on the flash drive) for ease of reference. The index also lists the corresponding Bates numbers for each document from the City's production.

For example, this will allow the parties to quickly refer to all sections of the Basis of Design (AR0135-AR0148 on the index, which alone is voluminous) without the need to print out and file hard copies of these documents. This will also allow the parties to easily refer to the ordinance and resolution, meeting agendas, staff reports, transcripts of public hearings, meeting minutes, etc.

Of course, the parties are free to include different versions of the documents appearing in the record as separate trial exhibits on our joint trial exhibit list (which we are separately preparing and hope to have for you shortly) but this approach will hopefully reduce the amount of exhibits that we will need to file.

Please let us know if you agree.

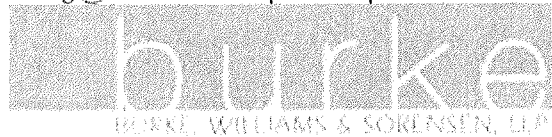
Sincerely,

**Christopher M. Long | Associate**

1901 Harrison Street, Suite 900 | Oakland, CA 94612-3501

d - 510.903.8848 | t - 510.273.8780 | f - 510.839.9104

clong@bwslaw.com | vCard | bwslaw.com



The information contained in this e-mail message is intended only for the CONFIDENTIAL use of the designated addressee named above. The information transmitted is subject to the attorney-client privilege and/or represents confidential attorney work product. Recipients should not file copies of this email with publicly accessible records. If you are not the designated addressee named above or the authorized agent responsible for delivering it to the designated addressee, you received this document through inadvertent error and any further review, dissemination, distribution or copying of this communication by you or anyone else is strictly prohibited. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING THE SENDER NAMED ABOVE AT 800.333.4297. Thank you.

# **EXHIBIT E**

**TO LONG DECLARATION**



BURKE, WILLIAMS & SORENSEN, LLP

1901 Harrison Street - Suite 900  
Oakland, California 94612-3501  
voice 510.273.8780 - fax 510.839.9104  
www.bwslaw.com

Direct No.: 510.903.8848  
clong@bwslaw.com

January 4, 2018

**VIA E-MAIL AND OVERNIGHT MAIL**

Robert P. Feldman  
Meredith M. Shaw  
David E. Myre  
Eliyahu Ness  
Quinn Emanuel Urquhart & Sullivan, LLP  
555 Twin Dolphin Drive, 5th Floor  
Redwood Shores, CA 94065-2139

Re: *Oakland Bulk & Oversized Terminal v. City of Oakland*  
U.S.D.C. Northern Dist. of California, Case No. 3:16-cv-7014-VC

Dear Counsel:

Two USB drives with a copy of Joint Trial Exhibit 640 (the record of the City's proceedings) are enclosed, pursuant to Kevin Siegel's email dated January 4, 2018.

Please let us know if you have any questions.

Sincerely,

Burke, Williams & Sorensen, LLP

A handwritten signature in black ink, appearing to read "C. Long", written over a horizontal line.

Christopher M. Long

CML:sh  
Enclosures

cc: Colin O'Brien (via e-mail)  
Jessica Yarnall Loarie (via e-mail)

# **EXHIBIT F**

**TO LONG DECLARATION**



**Long, Christopher M.**

---

**From:** Siegel, Kevin D.  
**Sent:** Thursday, January 04, 2018 9:37 AM  
**To:** David Myre (davidmyre@quinnemanuel.com)  
**Cc:** O'Brien, Sean; Aker, Gregory R.; Colvig, Timothy A.; Long, Christopher M.; EJ-Colin O'Brien (cobrien@earthjustice.org); jessica.yarnall@sierraclub.org; Hagle, Sharon; Meredith Shaw (meredithshaw@quinnemanuel.com); Robin Ramirez (robinramirez@quinnemanuel.com)  
**Subject:** Submission of Exhibits, including Manual Filing of the Record of the City's Proceedings; Equipment Delivery to Courtroom - Logistics  
**Attachments:** Joint Trial Exhibit 639 - Index to City of Oakland Administrative Record - OBOT v City of Oakland.docx

Dear David (and Meredith and Robin):

This email concerns logistics re exhibits and courtroom equipment. (Christopher and Sean are separately working to get you exhibits you've requested.)

Exhibits

Please confirm that OBOT will deliver the hard copy set of the trial exhibits to Judge Chhabria's Clerk, Kristen Melen, on Thursday, January 11, at 1.00 pm. Ms. Melen so instructed our paralegal, Sean O'Brien regarding the time frame. Since OBOT is responsible for lodging the electronic copies of the trial exhibits on January 9, per the Standing Order, we are expecting that OBOT will also deliver the hard copy set on January 11.

As discussed Monday when we met and conferred, the City will equally share these costs with you.

With respect to joint trial exhibits 639 and 640 (the index and the record of the City's proceedings, respectively), below is a link to an electronic copy of the record (Exh. 640) We will send you two USB drives with the record, for delivery tomorrow. Please include the USB drive with the hardcopy exhibits (referenced above) for the delivery on January 11. (Defendants had listed the index and the record as exhibits 1 and 2, but OBOT has renumbered them to 639 and 640.) The other copy is for your files. A copy of the index (exhibit 639) is attached.

<https://bwsllaw.sharefile.com/d-sd8486af5a404bea8>

Equipment

Ms. Melen also instructed Sean that the Stipulation and Order regarding the list of the equipment to be brought to the courtroom needs to be filed by January 9<sup>th</sup>, though she would prefer January 8<sup>th</sup>. A signed copy of the Order will be needed for access to the courthouse in order to load in equipment for the trial. I understand that OBOT are preparing that (please advise if I'm mistaken).

Regards,  
Kevin

Kevin D. Siegel | Partner  
1901 Harrison Street, Suite 900 | Oakland, CA 94612  
d - 510.903.8806 | t - 510.273.8780 | f - 510.839.9104  
ksiegel@bwsllaw.com | vCard | bwsllaw.com



The information contained in this e-mail message is intended only for the CONFIDENTIAL use of the designated addressee named above. The information transmitted is subject to the attorney-client privilege and/or represents confidential attorney work product. Recipients should not file copies of this email with publicly accessible records. If you are not the designated addressee named above or the authorized agent responsible for delivering it to the designated addressee, you received this document through inadvertent error and any further review, dissemination, distribution or copying of this communication by you or anyone else is strictly prohibited. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING THE SENDER NAMED ABOVE AT 800.333.4297. Thank you.

**EXHIBIT E**

1 Barbara J. Parker (SBN 69722)  
City Attorney  
2 Otis McGee, Jr. (SBN 71885)  
Chief Assistant City Attorney  
3 Colin Troy Bowen (SBN 152489)  
Supervising Deputy City Attorney  
4 OAKLAND CITY ATTORNEY  
One Frank Ogawa Plaza, 6th Floor  
5 Oakland, CA 94612  
Tel: 510.238.3601 Fax: 510.238.6500

6 Kevin D. Siegel (SBN 194787)  
E-mail: ksiegel@bwslaw.com  
7 Gregory R. Aker (SBN 104171)  
E-mail: gaker@bwslaw.com  
8 Timothy A. Colvig (SBN 114723)  
E-mail: tcolvig@bwslaw.com  
9 Christopher M. Long (SBN 305674)  
E-mail: clong@bwslaw.com  
10 BURKE, WILLIAMS & SORENSEN, LLP  
11 1901 Harrison Street, Suite 900  
Oakland, CA 94612-3501  
12 Tel: 510.273.8780 Fax: 510.839.9104

13 Attorneys for Defendant  
CITY OF OAKLAND

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 OAKLAND BULK & OVERSIZED  
19 TERMINAL, LLC,

20 Plaintiff,

20 v.

21 CITY OF OAKLAND,

22 Defendant.

23  
24 SIERRA CLUB and SAN FRANCISCO  
25 BAYKEEPER,

26 Defendant-Intervenors.

Case No. 3:16-cv-07014-VC

**DECLARATION OF SEAN P.  
O'BRIEN**

Date: January 16, 2018  
Time: 8:30 a.m.  
Ctrm.: No. 2, 17th Floor  
Judge: Honorable Vince Chhabria

1 I, Sean O'Brien, hereby declare:

2 1. I am a Litigation Support Paralegal with the firm Burke, Williams & Sorensen, LLP,  
3 attorneys of record for Defendant City of Oakland ("City") in the above-entitled action.

4 2. I have personal knowledge of the facts set forth in this declaration and, if called as a  
5 witness, could and would testify competently to such facts under oath.

6 3. In early April 2017, Christopher Long provided a USB flash drive to me which I  
7 understood to contain all documents downloaded by Sharon Hagle that were available from and  
8 posted on the City's Army Base Gateway Redevelopment Website.

9 4. In late March and early April 2017, I directed Aiken Welch Court Reporters to  
10 prepare certified transcriptions of the relevant portions of the City Council meeting videos posted  
11 on the website, including Agenda Item 7.16 from the July 19, 2016 City Council meeting, Agenda  
12 Item 5 from the June 27, 2016 City Council meeting, Agenda Item 4 from the May 9, 2016 City  
13 Council meeting, Agenda Item 13 from the May 3, 2016 City Council meeting, Agenda Item 11  
14 from the February 16, 2016 City Council meeting, and Agenda Item 4 from the September 21,  
15 2015 City Council meeting.

16 5. I uploaded and transferred the documents contained on the USB flash drive provided  
17 by Mr. Long, as well as the transcripts prepared by Aiken Welch Court Reporters, to our outside  
18 litigation support vendor, Harbor Litigation Solutions ("Harbor"). I instructed Harbor to convert  
19 any color documents to grayscale<sup>1</sup> and to apply Bates numbers to the documents and the hearing  
20 transcripts. The entire set of documents downloaded from the Army Base Gateway  
21 Redevelopment Project Website, plus the transcripts, resulted in a production set of documents  
22 bearing Bates numbers OAK 0004000 through OAK 0046834.

23 6. In November and December 2017, at Mr. Long's direction, I compiled an electronic  
24 copy of the Bates numbered Administrative Record set of documents and prepared a  
25 corresponding index of those documents with their Bates numbers, grouped by the following  
26 categories: (1) Resolutions and Ordinances; (2) Staff Reports, Agendas, Notices; (3) Transcripts

27 \_\_\_\_\_  
28 <sup>1</sup> Paragraph 1 of the parties' Electronically Stored Information ("ESI") Protocol stated that "[c]olor versions of any document produced in black and white shall be produced upon request." (emphasis added).

1 and Minutes of All Hearings; (4) Public Comments; (5) Environmental Review Documents; (6)  
2 Notice of Determination and Notice of Exemption for the Ordinance and Resolution; (7)  
3 Agreements, and (8) Miscellaneous. This index was modeled on an index for an Administrative  
4 Record in a CEQA action I have previously drafted, as instructed by Kevin Siegel of my firm. I  
5 also renamed the electronic file names to match a corresponding “AR” number assigned to each  
6 document in the index (for ease of reference), but I did not alter or otherwise modify the  
7 documents themselves in any way.

8 7. Errata:

9 a. On the index I prepared, I inadvertently did not assign an “AR” number for the  
10 Army Base Gateway Redevelopment Project LDDA, or include the Bates  
11 number range for that document. However, that document was downloaded  
12 from the Army Base Gateway Redevelopment Project Website at the following  
13 link:

14 <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak03843>  
15 [5.pdf](#). This document appears under section 7 on the index (“Agreements”),  
16 and bears Bates numbers OAK 0036691 through OAK 0036778. For ease of  
17 reference, the City also included within its production of the Administrative  
18 Record the recorded Memorandum of Lease Disposition and Development  
19 Agreement, which bears Bates numbers OAK 0036620 through OAK  
20 0036631.

21 b. Additionally, in section 7 of the Administrative Record produced to the Court  
22 and to the parties, during the file transfer process, additional copies of records  
23 that appear elsewhere in the Administrative Record and/or were system files  
24 not actually a part of the Administrative Record were inadvertently copied to  
25 the “Agreements” folder. Thus, for example, the file named “OAK 0036608”  
26 under the Agreements folder is an unintended duplicate of the file that appears  
27 as AR0022; the file named “OAK 0039392” and bearing Bates numbers OAK  
28 0039392 through OAK 0039419 was a database system file that, through a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

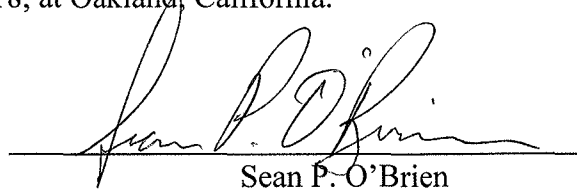
technical error in the document formatting conversion process by Harbor, should not have been included in the Administrative Record; the file named "OAK 0039420" is an unintended duplicate of the file that appears as AR 0221; the file named OAK 0039436 is an unintended duplicate of the file that appears as AR0224, etc.

c. Accordingly, with the exception of the files named "OAK 0036620" and "OAK 0036691," any additional files that do not have an "AR" prefix within the "07 Agreements" folder produced to the Court and the parties should be disregarded, as they were copied to this folder in error.

8. I have confirmed that all other documents listed on the Administrative Record index produced as Joint Trial Exhibit 639 and the USB flash drive containing the Administrative Record set of documents produced as Joint Trial Exhibit 640 correspond with the USB flash drive provided to me by Mr. Long.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 12th day of January, 2018, at Oakland, California.

  
Sean P. O'Brien

# **EXHIBIT F**



**EXHIBIT F**

<b>No.</b>	<b>BATES</b>	<b>Title</b>
1.	(AR 11) OAK 0035352-OAK 0036442	2016-06-22 - Report Prepared for Councilmember Kalb from Zoe Chafe Ph.D. Docs Cited Vol 1
2.	(AR 12) OAK 0034862-OAK 0035339	2016-06-22 - Report Prepared for Councilmember Kalb from Zoe Chafe Ph.D. Docs Cited Vol 2
3.	(AR 13) OAK 0034809-OAK 0034847	2016-06-22 - Report Prepared for Councilmember Kalb from Zoe Chafe Ph.D. Docs Cited Vol 3
4.	(AR 21) OAK 0008216-OAK 0008217	Public Comment Letter from TLS
5.	(AR 42) OAK 0008646-OAK 0008647	Public Comment Letter from the US Department of Transportation DOT DHS and EPA
6.	(AR 44) OAK 0008644-OAK 0008645	Public Comment Letter from the Port of Oakland
7.	(AR 45) OAK 0007878-OAK 0007894	Public Comment Letter from Stice Block
8.	(AR 40) OAK 0033194-OAK 0033199	Public Comment Letter from the Sierra Club
9.	(AR 46) OAK 0008218	Public Comment Letter from Ralph Kanz
10.	(AR 47) OAK 0007899-OAK 0008215	Public Comment Letter from Case for Natural Energy
11.	(AR 43) OAK 0008608-OAK 0008640	Public Comment Letter from the Sierra Club
12.	(AR 49) OAK 0008595-OAK 0008598	Public Comment Letter from Greg Stults
13.	(AR 50) OAK 0008648-OAK 0008650	Public Comment Letter from A. Brown
14.	(AR 51) OAK 0008221-OAK 0008436	Public Comment Letter from Earthjustice
15.	(AR 52) OAK 0008605-OAK 0008606	Public Comment Letter from Clean Water Action
16.	(AR 227) OAK 0039519-OAK 0039555	April 19, 2016 Letter from Stice-Block to State Senator Bob Wiekowski
17.	(AR 223) OAK 0039449	June 30, 2016 Email from Pat Cashman to Claudia Cappio
18.	(AR 66) OAK 0008603-OAK 0008604	Letter from Mayors of Berkeley, Emeryville, El Cerrito, Albany, Richmond etc.
19.	(AR 63) OAK 0007876	Comparison of ESA, Chafe Report, and Public Health Panel's Findings
20.	(AR 175) OAK 0045593-OAK 0045699	Northeast Gateway Air Quality Plan (8-30-16)

21.	(AR 175) OAK 0045769- OAK 0045935	City Admin Approval of NE Gateway AQP for Construction (Prologis) (10-4-16)
22.	(AR 64) OAK 0007843	June 2016 Public Health Panel's Frequently Asked Questions on Coal
23.	(AR 207) OAK 0007895- OAK 0007898	Councilmember Kaplan's Response to Deceptive Coal Matters
24.	(AR 224) OAK 0039436- OAK 0039446	June 28, 2016 Letter from Claudia Cappio to OBOT
25.	(AR 222) OAK 0039452- OAK 0039476	July 21, 2016 Letter from Claudia Cappio to OBOT
26.	(AR 221) OAK 0039420- OAK 0039435	August 2, 2016 Letter from Claudia Cappio to OBOT