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ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 02 2015

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

23 Real Parties In Interest.

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.

1 **PARTIES**

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

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

21 12. Petitioner SAN FRANCISCO BAYKEEPER (“BAYKEEPER”) is a regional non-  
22 profit organization with over 3,000 members who reside in the San Francisco Bay Area, the vast  
23 majority of whom have longstanding and ongoing personal interests in the mission of the  
24 organization, because they live, work, and recreate in or around the San Francisco Bay. Baykeeper’s  
25 mission is to protect and enhance the water quality of the San Francisco Bay-Delta estuary and its  
26 watershed for the benefit of its ecosystems and communities. As part of this goal, Baykeeper works  
27 to ensure that state and federal environmental laws are properly implemented and enforced.  
28 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

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

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

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

13 19. The true names and capacities, whether individual, corporate, or otherwise, of DOES  
14 1 through 199 are unknown to Petitioners. Petitioners allege that each of said Does is either a  
15 Respondent, or a Real Party in Interest, and they will amend this Petition to set forth the true names  
16 and capacities of said Doe parties when they have been ascertained.

#### 17 **JURISDICTION AND VENUE**

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

21 21. Venue is proper in this court pursuant to Code of Civil Procedure sections 393(b),  
22 394, and 395 because the Respondent City of Oakland is located in Alameda County, the Oakland  
23 Army Base redevelopment project and Oakland Bulk and Oversize Terminal are located in Alameda  
24 County, and many of the harmful impacts of the recent developments relating to those projects will  
25 occur in this County.

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



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

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

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

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

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

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

22           59.     On July 16, 2015, Councilmembers Dan Kalb, Rebecca Kaplan, and Laurence E.  
23 Reid moved for the City Council to hold a hearing for the purposes of taking testimony and  
24 receiving information on the public health and safety impacts of transporting coal through the City,  
25 and to evaluate whether the City has the authority under the development agreements to regulate the  
26 transportation and handling of coal products. The hearing also was intended as a follow-up to an  
27 ordinance passed by the City of Oakland on June 17, 2014, Opposing the Transportation of  
28 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



1 *Localized Effects of Coal Transportation, Storage and Handling*

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

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

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

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

22 73. Diesel combustion by the coal trains carrying coal to the terminal, as well as the ships  
23 ferrying coal away from the terminal will also contribute to the negative health effects associated  
24 with coal transportation. Coal trains will be powered by up to five diesel-fueled locomotives, which  
25 emit diesel particulate matter, as well as air pollutants like nitrogen oxides, carbon monoxide and  
26 sulfur dioxide. Ships also emit diesel particulate matter and other air pollutants. Exposure to diesel  
27 particulate matter has been linked to acute short-term symptoms such as headache, dizziness, light-  
28 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.

1                                    ***Worker Health and Safety Concerns Associated With Coal Terminal***

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

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

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

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

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

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

23                                    ***Species and Ecosystem Effects Associated With Coal Terminal***

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

27           85.    At the terminal, coal dust can enter the aquatic environment through stormwater  
28 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.

1 **CEQA LEGAL BACKGROUND**

2 98. The California Environmental Quality Act (“CEQA”), Public Resources Code §§  
3 21000 *et. seq.*, is a comprehensive statute designed to “to prevent[ ] environmental damage, while  
4 providing a decent home and satisfying living environment for every Californian.” (Pub. Res.  
5 § 21000(g).) Given its broad goals, the California Supreme Court has held that CEQA must be  
6 interpreted “to afford the fullest possible protection to the environment within the reasonable scope  
7 of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 3 Cal.3d 247, 259.)

8 99. At its core, CEQA’s policies are designed to inform decision-makers and the public  
9 about the potential significant environmental effects of a project. (Cal. Code Regs., tit. 14,  
10 § 15002(a)(1) [the regulations at tit. 14, §§ 15000 *et seq.* are hereinafter cited as “Guidelines”].)  
11 Such disclosure ensures that “long term protection of the environment . . . shall be the guiding  
12 criterion in public decisions.” (Pub. Res. Code § 21001(d).)

13 100. An agency must prepare an environmental impact report (“EIR”) where it proposes to  
14 carry out or approve a “project that may have a significant effect on the environment.” (Pub. Res. §  
15 21151.) “Significant effect” means a “substantial, or potentially substantial, adverse change in the  
16 environment.” (Pub. Res. § 21068; Guidelines § 15002(g).) The EIR is the “heart of CEQA” and  
17 serves as “an environmental alarm bell whose purpose it is to alert the public and its responsible  
18 officials to environmental changes before they have reached ecological points of no return.” (*Laurel*  
19 *Heights Improvement Ass’n. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.)

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

25 102. A lawsuit compelling performance of an agency’s duty to conduct further  
26 environmental review may be filed within 180 days of the time the “plaintiff knows or should have  
27 known that the project underway differs substantially from the one described in the initial EIR.”  
28 (*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)**

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

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

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

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

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

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

26 **SECOND CAUSE OF ACTION**  
27 **(Violation of CEQA – Failure to Prepare Supplemental or Subsequent EIR Because of**  
28 **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)**

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

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).)



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  
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*Attorney for Sierra Club*

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**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.

  
\_\_\_\_\_

# EXHIBIT A



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](mailto:jsmith@oaklandcityattorney.org)

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

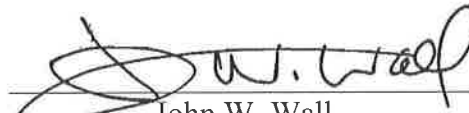
I hereby certify that on October 2, 2015, I served via electronic mail and U.S. first class mail one true copy of the **Notice of Intent to File California Environmental Quality Act**

**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  
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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*

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  
FRANCISCO BAYKEEPER, and ASIAN  
15 PACIFIC ENVIRONMENTAL NETWORK,

16 Petitioners,

17 v.

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

20 Respondents.

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

24 Real Parties In Interest.

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

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

15 JESSICA YARNALL LOARIE  
16 Sierra Club  
17 *Attorney for Sierra Club*

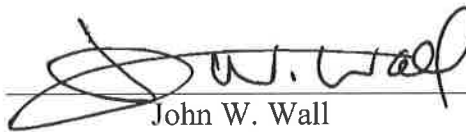
1 **PROOF OF SERVICE**

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

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

7 Office of the Attorney General  
8 1515 Clay Street  
9 Oakland, CA 94612-1499

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

12   
13 John W. Wall