



News from Oakland City Attorney Barbara J. Parker

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City of Oakland Agrees to Settlement Framework to Resolve Lawsuits Regarding the 66-Year Ground Lease of the West Gateway of the Former Oakland Army Base for a Bulk Commodity Terminal

Media Contact:

Oakland City Attorney's Office
Zoe M. Savitsky
(510) 238-6623
zsavitsky@oaklandcityattorney.org

Oakland, CA — On January 31st the City of Oakland (“City”), Oakland Bulk and Oversized Terminal, LLC (“OBOT”), California Capital Investment Group (“CCIG”), Insight Terminal Solutions, LLC (“ITS”), and Oakland Global Rail Enterprise, LLC (“OGRE”) agreed to a framework for settling two pending lawsuits. The lawsuits arose out of disputes regarding the City’s 2016 Army Base Redevelopment Project 66-year Ground Lease of the West Gateway of the former Oakland Army Base for a bulk commodity terminal.

Having agreed to the key terms of the settlement framework, the parties will immediately proceed to craft the terms of a settlement agreement and related documents to (1) ensure that no coal or coke will be loaded, unloaded, transferred between any mode of transportation, including without limitation between or among a motor vehicle, ship, or train at the West Gateway; (2) resolve the pending lawsuits and allow development of the West Gateway to proceed; and (3) ensure the City receives compensation under the Ground Lease for the use of this valuable public land.

BACKGROUND

The pending lawsuits arose out of disputes regarding two development contracts that govern the City-owned West Gateway land: the Development Agreement and the 66-year Ground Lease.

In 2013, the City entered into a Development Agreement with OBOT’s parent company, CCIG. The agreement granted CCIG and OBOT rights to develop a parcel of public land adjacent to the Port of Oakland and the San Francisco Bay Bridge. The Development Agreement expressly provides that the City may adopt new regulations and apply them to OBOT’s development if the City determines,

based on substantial evidence and after a public hearing, that a failure to do so would be substantially dangerous to the health and safety of adjacent neighbors and others using, occupying, or surrounding the West Gateway.

In 2015, the City learned that OBOT was pursuing development of a rail-to-ship coal terminal. After studying the health and safety risks associated with handling coal at the terminal over a nearly year-long public hearing process, the evidence before the City Council revealed that OBOT's plans posed serious health and safety risks to West Oakland, a community that has long suffered systemic environmental racism. As a result, the Oakland City Council adopted an Ordinance and Resolution prohibiting handling of coal at the West Gateway, based on its determination that failure to do so would result in substantial danger.

In 2016, OBOT filed suit in federal court to invalidate the Ordinance and Resolution. The federal trial court ruled in OBOT's favor and the Ninth Circuit Court of Appeals affirmed, invalidating the City's Resolution that applied the Ordinance to OBOT. The Court concluded that the evidence before the Council at the time it passed the Resolution was not sufficient, but acknowledged that the City could choose to enact a new Resolution based on a different record.

However, in 2018, following the federal court decisions, CCIG and OBOT failed to meet the development requirements in their agreements with the City. In particular, CCIG and OBOT failed to meet the milestone deadlines for construction, which triggered the Ground Lease's early termination provision (intended to permit the City to move forward to ensure the productive use of the land).

The City therefore terminated the Ground Lease with CCIG and OBOT in 2018 for their failure to commence and/or meet these development/construction milestones. OBOT and its affiliated company OGRE then filed a second lawsuit against the City, this time in Alameda County Superior Court, alleging that the City breached its obligations under the agreements. OBOT and OGRE blamed their failure to meet their contractual deadlines on the City's prohibition of the storage and handling of coal at the bulk terminal to be built at the West Gateway.

In 2020 the City filed its own breach of contract lawsuit against CCIG and OBOT in Alameda County Superior Court to regain possession of the West Gateway from OBOT based on the City's termination of the Ground Lease. The state court lawsuits have been consolidated in the Alameda County Superior Court and were scheduled for trial on March 5, 2022.

The settlement of these lawsuits, once finalized, will allow development options to realize the West Gateway's economic potential and, importantly, preclude transferring or handling coal and other commodities that are harmful to City residents.