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13 OAKLAND GLOBAL RAIL ENTERPRISE, LLC, *and Counter-*
14 *Defendant* CALIFORNIA CAPITAL & INVESTMENT GROUP

14 SUPERIOR COURT OF CALIFORNIA

15 IN AND FOR THE COUNTY OF ALAMEDA

16 OAKLAND BULK AND OVERSIZED
17 TERMINAL, LLC, a California limited liability
18 company and OAKLAND GLOBAL RAIL
19 ENTERPRISE, LLC, a California limited
20 liability company,

19 Plaintiffs,

20 v.

21 CITY OF OAKLAND, a California municipal
22 corporation,

22 Defendant.

23 CITY OF OAKLAND,

24 Counter-Plaintiff,

25 v.

26 OAKLAND BULK AND OVERSIZED
27 TERMINAL, LLC, and CALIFORNIA
28 CAPITAL INVESTMENT GROUP, INC.

Counter-Defendants.

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County of Alameda
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Consolidated Case Nos. RG18930929 /
RG20062473

Unlimited Civil Case / Assigned to
Judge Noël Wise, Dept. 514

**PLAINTIFFS' OBJECTIONS,
COMMENTS AND ERRATUM TO
THE COURT'S PROPOSED
STATEMENT OF DECISION**

Trial Date: July 10, 2023

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, rule 3.1590(g) and the Court’s October 27, 2023
3 Order in this matter, Plaintiff and Counter-Defendant Oakland Bulk & Oversized Terminal, LLC
4 (“OBOT”), Plaintiff Oakland Global Rail Enterprise, LLC (“OGRE”), and Counter-Defendant
5 California Capital Investment Group, Inc. (collectively, “Plaintiffs”) submit the following narrow
6 objections, comments and erratum to the Court’s October 27, 2023 (Proposed) Statement of
7 Decision (“PSOD”). Plaintiffs appreciate the Court’s expenditure of resources to prepare the PSOD
8 and they agree with it in virtually every respect. Plaintiffs respectfully request that the Court
9 consider four areas of potential correction in the PSOD: (1) the omission of a specific finding that
10 the City breached the Development Agreement (“DA”); (2) the omission of a specific finding that
11 the City breached the covenant of good faith and fair dealing implied in the DA; (3) potential
12 misconstruction of certain limited claims; and (4) minor potential errors in citations to the trial
13 record.

14 **II. PLAINTIFFS’ PROPOSED CORRECTIONS**

15 **A. OBOT’s First Cause of Action for Breach of Contract**

16 In its first cause of action, OBOT alleged that the City breached both the Ground Lease and
17 the DA. (First Amended Complaint (“FAC”) ¶¶ 98-107.) As to the DA, OBOT alleged and
18 presented evidence at trial that, after the Federal Decision,¹ the City breached sections 3.4.4 (City’s
19 duty to ministerially apply construction code as a ministerial act), 3.5.1 (duty to rely on existing
20 EIR to the fullest extent permissible), and 8.4 (duty to meet and confer). (*See* Plaintiffs’ [Proposed]
21 Statement of Decision (“PPSOD”) at 27:1-16, 34:27-35:6, 63:19-67:14; Plaintiffs’ Response to
22 City of Oakland’s [Proposed] Statement of Decision at 45:9-47:19.) Plaintiffs reiterated the DA
23 breach claims in their September 25, 2023 [Proposed] Statement of Decision. (*See, e.g.*, PPSOD at
24 1:12-17 (“This case concerns two contracts central to the Project: first and primarily, the Army
25 Base Gateway Redevelopment Project Ground Lease for West Gateway dated February 16, 2016

26 _____
27 ¹ “Federal Decision” refers to the findings of fact and conclusions of law that the U.S. District Court
28 in *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*, 321 F. Supp. 3d 986 (N.D. Cal. 2018), *affirmed* 960 F.3d 603 (9th Cir. 2020) (“*OBOT I*”).

1 ('Ground Lease' or "GL") (Ex. 68); and second, the Development Agreement Regarding the
2 Property and Project Known as 'Gateway Development/Oakland Global' dated July 16, 2013
3 ('Development Agreement' or 'DA') (Ex. 7)."), 3:9-11 ("OBOT and OGRE are Plaintiffs and
4 allege causes of action against the City as Defendant for: (1) breach of the Ground Lease and the
5 Development Agreement ..."); *see also id.* at 27:1-16, 34:27-35:6, 63:19-67:14.)

6 The PSOD adopts nearly all of the Federal Decision, including Judge Chhabria's finding
7 that the City breached the DA. (PSOD at 4:16-33:16.) The PSOD does not expressly resolve
8 OBOT's claim that the City breached the DA *after* the Federal Decision.² (*See* PSOD at 2:20-21
9 ("the Court finds the City breached the Parties' contract"), 33:26-34:6 (stating that Plaintiffs alleged
10 the City "breached the Ground Lease" and that "[t]his trial was limited to the liability phase of
11 those allegations"). That may be because OBOT presented its DA breach claims as support for
12 Plaintiffs' core claim that the City breached the Ground Lease by terminating it without respecting
13 OBOT's Force Majeure rights, which included extensions of OBOT's time to perform based on the
14 City's breaches of the DA. (*See* PPSOD, p. 25, n.9 ("Plaintiffs' First Cause of Action is by OBOT
15 for breach of the Ground Lease and Development Agreement. . . . This section addresses both
16 together because OBOT presented its claims under the Development Agreement as reasons that the
17 Initial Milestone Date in the Ground Lease was extended. In other words, if OBOT prevails on its
18 Development Agreement theories, the City's termination of the Ground Lease based on an August
19 14, 2018, Initial Milestone Date was ineffective and a breach of the Ground Lease."))³

20 _____
21 ² In the Federal Decision, Judge Chhabria found that the City breached the DA by enacting a
22 resolution to apply the City's no-coal ordinance to OBOT without "substantial evidence" that
23 failure to apply it would have posed substantial danger to the health and safety of the City's
24 residents. *OBOT I*, 321 F. Supp. at 988, 992, 1006, 1010. The City's continuing breaches of the DA
25 after the Federal Decision could not have been raised in the federal litigation and thus cannot be
26 subject to a *res judicata* defense. Cal. Code Civ. Proc. § 1047; *Abbott v. 76 Land & Water Co.*, 161
27 Cal. 42, 48-49 (1911); *Legg v. United Benefit Life Ins. Co. of Omaha*, 182 Cal. App. 2d 573, 580
28 (1960); *see also Karlsson Grp., Inc. v. Langley Farm Investments, LLC*, No. CV-07-0457-PHX-
PGR, 2008 WL 4183025, at *5 (D. Ariz. Sept. 8, 2008); *Zingheim v. Marshall*, 249 Cal. App. 2d
736, 744-45 (1967). As this Court has noted in the PSOD, claims based on events that occurred
after May 15, 2018 are not impacted by *res judicata* in this case. (*See* PSOD, p. 90, n.36.)

³ *See also* PPSOD at 27:1-16 ("In addition to Plaintiffs' claim that the City breached the Ground
Lease by terminating it (including Plaintiffs' various supporting theories under the Ground Lease),
Plaintiffs have alleged three breaches of the Development Agreement. Like the breaches Plaintiffs

1 The Court’s proposed findings of fact and conclusions of law, including about the DA and
2 OBOT’s related Force Majeure claims, support a finding that the City also breached the DA *after*
3 the Federal Decision. For instance, the PSOD includes findings that:

- 4 • The 2013 DA locked in place the regulations that existed at the time; it precluded
5 regulations adopted later from being applied to the Project; and nothing in the
6 original EIR for the Project, the 2012 Addendum, or any of the contracts precluded
7 transportation of any bulk commodity through the Terminal that could lawfully be
8 transported when the parties entered the DA. (PSOD at 38:11-17, 41:8-42:1.)
- 9 • The City informed OBOT that it would go through a discretionary rather than
10 administrative review, would evaluate commodities to be transported on a
11 “commodity-by-commodity” basis, and might reopen CEQA. (PSOD at 55:15-
12 56:4, 58:28-59:15.)
- 13 • “One of the critical items that was necessary to move the Project forward was the
14 need for the City to inform OBOT, clearly and unequivocally, what commodities
15 the City viewed as impermissible, and the legal basis for City’s position.” (PSOD
16 at 61:9-11.)
- 17 • After the Federal Decision, the City could have tried to issue a regulation supported
18 by evidence to support a coal ban at the Terminal: “What the City could not do was
19 undermine or improperly terminate the contracts it had with OBOT—that was not
20

21 allege under the Ground Lease, each alleged Development Agreement breach overlaps with a claim
22 of City-caused delay that Plaintiffs included in their Force Majeure letters to the City before
23 November 22, 2018. (*See* Ex. 76; Ex. 148; Ex. 174; Ex. 176; Ex. 191; Ex. 248.) These include the
24 City’s alleged failure to (1) timely certify a list of regulations that existed when the Development
25 Agreement was signed and that would apply to the Project as required by Section 3.4.3; (2) rely on
26 the existing EIR to the fullest extent permissible as required by Section 3.5.1 and apply the then-
27 existing Construction Code as a ministerial act as required by Section 3.4.4; and (3) meet and confer
28 with OBOT about the first two breaches as required by Section 8.4. Although these delay claims
are made based on the City’s obligations under the Development Agreement, Plaintiffs have
presented them as additional City acts that delayed performance of their Ground Lease obligations,
and that upon proper notice, automatically extended the Initial Milestone Date under Ground Lease,
section 16.1. If Plaintiffs are correct, then the City breached the Ground Lease by prematurely
terminating it.”).

- 1 a legal option. That, however, was the path the City selected.” (PSOD at 68:3-14.)
- 2 • As of July 2018 (after the Federal Decision), the City still had not provided OBOT
- 3 with guidance regarding what commodities could be shipped, making it impossible
- 4 for OBOT to submit accurate schematics. (PSOD at 77:19-78:8.)
- 5 • The City placed OBOT in a lose-lose situation because, even after the Federal
- 6 Decision confirmed that coal was a permissible commodity, the City refused to
- 7 identify acceptable commodities or provide the feedback on the BOD needed to
- 8 advance the design. (PSOD at 82:17-83:9.)
- 9 • The City’s breach of the DA by applying the no-coal ordinance to the Project was
- 10 an event of Force Majeure. (PSOD at 89:3-9.)
- 11 • “[T]he City’s failure to clearly and unequivocally inform OBOT what commodities
- 12 the City viewed as impermissible, and the basis for the City’s position” was an
- 13 event of Force Majeure. (PSOD at 90:5-6.)

14 OBOT therefore respectfully requests the following clarifications in the final statement of

15 decision:

Current PSOD Language	Proposed Correction ⁴
<p>17 “The narrow legal question in the first phase</p> <p>18 of this trial was which Party, OBOT or the</p> <p>19 City, breached the Ground Lease. For the</p> <p>20 reasons set forth in this Statement of</p> <p>Decision, the Court finds the City breached</p> <p>the Parties’ contract.” (PSOD at 2:18-21.)</p>	<p>“The [primary and] narrow legal question in the</p> <p>first phase of this trial was which Party, OBOT</p> <p>or the City, breached the Ground Lease. For the</p> <p>reasons set forth in this Statement of Decision,</p> <p>the Court finds the City breached the Parties’</p> <p>contract[s].”</p>
<p>21 “Here, the Parties agreed they entered into a</p> <p>22 contract (the Ground Lease and the related</p> <p>23 agreements, including the LDDA and the</p> <p>24 Development Agreement). Each alleged the</p> <p>25 other breached the Ground Lease. The Parties</p> <p>26 agreed OBOT did not complete the Minimum</p> <p>27 Project by the August 14, 2018 Initial</p> <p>Milestone Date. OBOT asserted its</p> <p>performance was excused as set forth in its</p> <p>claims of force majeure, which the City</p> <p>improperly rejected. The City contended the</p> <p>opposite—OBOT’s non-performance was not</p> <p>excused, and the City therefore correctly</p>	<p>“Here, the Parties agreed they entered into a</p> <p>contract (the Ground Lease and the related</p> <p>agreements, including the LDDA and the</p> <p>Development Agreement). Each alleged the</p> <p>other breached the Ground Lease. The Parties</p> <p>agreed OBOT did not complete the Minimum</p> <p>Project by the August 14, 2018 Initial Milestone</p> <p>Date. OBOT asserted its performance was</p> <p>excused as set forth in its claims of force</p> <p>majeure, which the City improperly rejected.</p> <p>The City contended the opposite—OBOT’s non-</p> <p>performance was not excused, and the City</p> <p>therefore correctly denied OBOT’s claims of</p>

28 ⁴ Proposed corrections are in brackets with yellow highlighting.

Current PSOD Language	Proposed Correction ⁴
<p>denied OBOT’s claims of force majeure and properly terminated the Lease on November 22, 2018. This trial was limited to the liability phase of those allegations. As a result, this Court makes the following additional findings of fact (regarding events that occurred before, during and after and Federal Decision) and conclusions of law that are specific to this case.” (PSOD at 33:25-34:8.)</p>	<p>force majeure and properly terminated the Lease on November 22, 2018. [Among its force majeure claims, OBOT also alleged that the City breached the Development Agreement.] This trial was limited to the liability phase of those allegations. As a result, this Court makes the following additional findings of fact (regarding events that occurred before, during and after and Federal Decision) and conclusions of law that are specific to this case.”</p>
<p>“The Court finds that one of the critical items that was necessary to move the Project forward was the need for the City to inform OBOT, clearly and unequivocally, what commodities the City viewed as impermissible, and the legal basis for City’s position.” (PSOD at 61:9-11.)</p>	<p>“The Court finds that one of the critical items that was necessary to move the Project forward was the need for the City to inform OBOT, clearly and unequivocally, what commodities the City viewed as impermissible, and the legal basis for City’s position. [The City’s failure to do so after the Federal Decision breached the Development Agreement.]”</p>
<p>“Except for the City’s breach of the Development Agreement, each of these acts occurred after May 15, 2018.” (PSOD at 90:14-15.)</p>	<p>“Except for the City’s [initial] breach of the Development Agreement, each of these acts occurred after May 15, 2018. [The City’s failure to inform OBOT what commodities the City viewed as impermissible after the Federal Decision also breached the Development Agreement.]”</p>

B. Plaintiffs’ Fourth Cause of Action for Breach of the Implied Covenant

In their fourth cause of action, Plaintiffs alleged that the City breached the covenant of good faith and fair dealing implied in both the Ground Lease and the DA after the Federal Decision. (FAC ¶¶ 125-133.) They reiterated their breach of the implied covenant claim as to the DA in their post-trial PPSOD. (*See, e.g.*, PPSOD at 3:9-13 (“OBOT and OGRE are Plaintiffs and allege causes of action against the City as Defendant for: ... (4) breach of the implied covenant of good faith and fair dealing in both the Ground Lease and Development Agreement”), 63:19-68:12 (After the Federal Decision, the City engaged in a bad faith strategy to deny Plaintiffs the benefits of the DA), 89:3-8 (“Even if Plaintiffs had not prevailed on their breach of contract claim or complied with Section 16.1 of the Ground Lease to trigger automatic extensions of OBOT’s deadlines, the City’s conduct detailed above also demonstrates that the City breached the covenant of good faith and fair dealing implied in the contract. The evidence demonstrates that the City engaged in a long-term

1 strategy with multiple approaches to deny OBOT and OGRE the benefits of the Ground Lease and
2 OBOT the benefits of the Development Agreement.”⁵ The Court’s PSOD does not expressly
3 address Plaintiffs’ implied covenant claim as to the DA, instead appearing to limit its findings of
4 fact and conclusions of law about the fourth cause of action to the Ground Lease. (*See* PSOD at
5 93:3-94:2.)

6 The same findings of fact and conclusions of law identified above as to OBOT’s breach of
7 DA claims, also support the addition of specific findings of fact and conclusions of law that the
8 City’s conduct after the Federal Decision breached the implied covenant as to the DA. The
9 following additional findings in the Court’s PSOD also support a finding that the City breached the
10 DA’s implied covenant:

- 11 • “The Court finds the City’s failure to rescind the Cappio memo by the summer of
12 2018, as well as the pretext for its issuance, demonstrate a lack of good faith by the
13 City vis-à-vis its relationship with OBOT for the development of the Project’s
14 private improvements.” (PSOD at 53:12-54:2.)
- 15 • “The Court finds the City’s unexplained failure to substantively respond to
16 OBOT’s three claims of force majeure in 2018 (April 10, 2018, July 30, 2018, and
17 August 3, 2018) demonstrates a lack of good faith and fair dealing by the City.”
18 (PSOD at 74:9-12.)
- 19 • “The Court finds the City’s decision to ‘defer’ its response to OBOT’s claims of
20 force majeure until September 21, 2018, and then reject those claims without
21 providing a written, substantive basis for doing so demonstrates a lack of good
22 faith by the City.” (PSOD at 80:15-17.)
- 23 • “The Court finds the City’s decisions to issue a Notice of Event of Default and
24 terminate the Lease instead of substantively responding to any of the
25 correspondence, materials or issues raised by OBOT, ITS or Millcreek Engineering

26 _____
27 ⁵ *See also* PPSOD at 90:21-93:5 (after the Federal Decision, the City continued to act in bad faith
28 to deny OBOT the benefits of the DA, including by insisting on a ban-compliant terminal, applying
and failing to rescind an impenetrable permitting process, and refusing to provide feedback on the
Basis of Design).

1 since September 22, 2018, including OBOT’s force majeure claims, demonstrate
 2 the City’s lack of good faith to honor the Lease and the other agreements between
 3 the Parties.” (PSOD at 85:25-86:2.)

4 OBOT therefore respectfully requests the following clarifications in the Court’s final
 5 statement of decision:

Current PSOD Language	Proposed Correction
<p>7 “To prove its claim that the City violated the 8 covenant of good faith and fair dealing, OBOT must prove all the following:</p> <ol style="list-style-type: none"> 9 1. The parties entered into the Ground Lease; 10 2. OBOT did all, or substantially all of the significant things that the Lease required it to do, or OBOT was 11 excused from having to do those 12 things; 13 3. All conditions required for the City’s performance had occurred or were excused; 14 4. The City prevented OBOT from receiving the benefits under the Lease; 15 5. By doing so, the City did not act fairly and in good faith; and 16 6. OBOT was harmed by the City conduct.” (PSOD at 93:3-11.) 	<p>7 “To prove its claim[s] that the City violated the 8 covenant of good faith and fair dealing, OBOT must prove all the following:</p> <ol style="list-style-type: none"> 9 1. The parties entered into the Ground Lease [and/or the Development Agreement]; 10 2. OBOT did all, or substantially all of the significant things that the Lease [and/or the Development Agreement] required it to do, or OBOT was excused from having 11 to do those things; 12 3. All conditions required for the City’s performance had occurred or were excused; 13 4. The City prevented OBOT from receiving the benefits under the Lease [and/or the Development Agreement]; 14 5. By doing so, the City did not act fairly and in good faith; and 15 6. OBOT was harmed by the City conduct.” (PSOD at 93:3-11.)
<p>18 “The Parties agree they entered into the 19 Ground Lease.” (PSOD at 93:13.)</p>	<p>18 “The Parties agree they entered into the Ground Lease [and the Development Agreement].” (PSOD at 93:13.)</p>
<p>21 “OBOT proved the City’s lack of good faith 22 efforts to address various obstacles (some of which were created by the City) in OBOT’s path, and its unjustified termination of the Lease, prevented OBOT from receiving the 23 benefits of the Ground Lease.” (PSOD at 17- 20.)</p>	<p>21 “OBOT proved the City’s lack of good faith 22 efforts to address various obstacles (some of which were created by the City) in OBOT’s path, and its unjustified termination of the Lease, prevented OBOT from receiving the benefits of the Ground Lease [and the Development Agreement].” (PSOD at 17-20.)</p>
<p>25 “The Court finds the City breached the Ground Lease when it breached its implied covenant of good faith and fair dealing to 26 OBOT.” (PSOD at 94:1-2.)</p>	<p>25 “The Court finds the City breached the Ground Lease [and the Development Agreement] when it breached [the] implied covenant of good faith and fair dealing to OBOT [in each contract].” (PSOD at 94:1-2.)</p>

1 **C. Potential Misconstruction of Certain Limited Claims**

2 **1. “Completed” or “Commenced” Construction (PSOD, Page 34, Note 5)**

3 At page 34, note 5, the PSOD refers to trial testimony potentially supporting the argument
4 that OBOT “had completed the Minimum Project by the Initial Milestone Date.” OBOT did not
5 contend that it completed the Minimum Project. OBOT argued that it “commenced” construction
6 of the Minimum Project by the Initial Milestone Date. (*See* PPSOD at 84:19-87:10.) Other than
7 note 5, the PSOD consistently refers to commencement rather than completion of construction with
8 respect to OBOT’s argument and the Initial Milestone Date. (*See, e.g.*, PSOD at 48:7-19 and n.14.)
9 Plaintiffs respectfully request that each occurrence of the term “completed” in note 5 be changed
10 to “commenced.”

11 **2. The City’s July 24, 2018 Notice of Past Due Rent (PSOD at 70:8-12)**

12 The PSOD states at page 70, lines 8-12: “Implicit in the City’s notice was its conclusion
13 that OBOT had not promptly commenced and ‘diligently pursue[d] to Completion, the design and
14 construction of the OBOT Wharf and Rail Improvements’ which would have tolled the
15 ‘Commencement Date’ of the Lease, including OBOT’s obligation to pay rent pursuant to section
16 1.7.2. (Ex. 68 at 17.)” Under Section 1.7.2 of the Ground Lease, the maximum tolling period for
17 the obligation to pay rent ended on February 15, 2018 irrespective of OBOT’s commencement of
18 and diligence in the Terminal’s design and construction. Thus, the notice did not raise an
19 implication that the City had concluded that OBOT was not acting diligently. It merely
20 communicated the City’s position that the maximum period for rent tolling had expired. Plaintiffs
21 respectfully request that the quoted language be deleted from the final statement of decision.

22 **D. Minor Potential Citation Errors**

23 The PSOD contains a limited number of what Plaintiffs believe to be errors in citation to
24 the record evidence, which in this case was voluminous. Some of the potential errors may simply
25 be typographical. In the interest of accuracy, Plaintiffs provide a list of potentially erroneous
26 citations and proposed corrections in the “Erratum of Ministerial or Typographical Errors” attached
27 as **Exhibit A**.

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Date: November 13, 2023

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& INVESTMENT GROUP

Exhibit A: Erratum of Ministerial or Typographical Errors

Proposition	Page No. of Error	Correct Citation
<p>Between the time the Development Agreement was signed in 2013 and the ground Lease was finalized in 2016, members of the public and City officials expressed concerns regarding health and environmental issues associated with coal. Libby Schaaf, who had served on the City Council from 2010 to 2014 2011 to 2015⁶, began serving as the City’s mayor in 2015. (Tr. 1749:21–1750:1 (Schaaf).)</p>	<p>Starting at 38:21</p>	<p>2011 to 2015</p>
<p>Access to rail, owned or held by these parties, was essential to the Project. (Tr. 2090:21–23, 2093:23–4 2093:23-2094:3, 2095:12–16 (Cappio).)</p>	<p>Starting at 43:8</p>	<p>2093:23-2094:3</p>
<p>While OBOT’s construction activities show it was working in good faith to complete the Minimum Project by the Initial Milestone Date, the evidence at trial did not clearly demonstrate that OBOT had made any of the rail improvements listed in section 6.1(b) of the ground lease—the evidence was, at best, equivocal. (Ex. 68 at 23 Ex. 68 at 32.)</p>	<p>Starting at 34:fn. 5</p>	<p>Ex. 68 at 32</p>
<p>Commodity A represented an example commodity with certain properties, including a bulk density of 55 lb/ft³ (mass), not corrosive, and extremely abrasive. (Id. at 10 (Table 5-1).) Commodity B represented an example commodity with other properties, including a bulk density of 78 lb/ft³ (mass), not corrosive, and abrasive. (Ex. 38 at 9 (§ 2.3 10 Ex. 38 at 10 (§ 5).)</p>	<p>Starting at 37:fn 8</p>	<p>Ex. 38 at 10 (§ 5)</p>
<p>In 2002, the City prepared an Environmental Impact Report (EIR) under the California Environmental Quality Act, California Public Resources Code, section 21000 et seq. (CEQA). (See Ex. 1 at 15 See Ex. 1 at 15 (§ 1.1).)</p>	<p>37:22-38:1</p>	<p>See Ex. 1 at 15 (§ 1.1)</p>

⁶ The citation/information that is incorrect is highlighted in yellow.

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Proposition	Page No. of Error	Correct Citation
City representatives, including John Monetta (City Project Manager) and Douglas Cole (the City’s Project Manager responsible for compliance with the State’s TCIF grant), agreed the Rail Access Agreement and Rail Operating Agreement were close to completion when the City and the Port executed the Cost Sharing Agreement. (Tr. 1664:13–20, 1647:10–25 (McClure); Ex. 854 at 4-14-15 (Cole Depo.).)	43:22-26	Ex. 854 at 14-15
OBOT asserted it had acted with substantial, good faith compliance with the Development Agreement and as required, asked the City to issue a certificate of OBOT’s compliance within 45 days. (<i>Id.</i> at 6-7.)	62:17-19	<i>Id.</i> at 7
On July-25-5, 2017, pursuant to the requirements of the Development Agreement, OBOT submitted its annual compliance report to the City for the preceding year. (Ex. 633.)	63:11-13	July 5, 2017