CITY OF OAKLAND

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator

(510) 238-3301
FAX (510) 238-2223
TDD (510) 238-2007

June 28, 2016

Sent via U.S. Mail and Electronic Mail

Prologis CCIG Oakland Global, LLC
Pier 1, Bay 1
San Francisco, CA 94111
Attn: Mr. Mark Hansen
Email: mhansen@prologis.com

Prologis CCIG Oakland Global, LLC
c/o California Capital & Investments, Inc.
The Rotunda Building
300 Frank H. Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami
Email: tagami@californiagroup.com

Oakland Bulk and Oversized Terminal, LLC
The Rotunda Building
300 Frank H. Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami
Email: tagami@californiagroup.com

Re: A Resolution (A) Applying Ordinance No. ___C.M.S. [An Ordinance (1) Amending The Oakland Municipal Code To Prohibit The Storage And Handling Of Coal And Coke At Bulk Material Facilities Or Terminals Throughout The City Of Oakland And (2) Adopting California Environmental Quality Act (CEQA) Exemption Findings] To The Proposed Oakland Bulk And Oversized Terminal Located In The West Gateway Development Area Of The Former Oakland Army Base; And (B) Adopting CEQA Exemption Findings And Relying On The Previously Certified 2002 Army Base Redevelopment Plan EIR And 2012 Addendum.

Dear Messrs. Hansen and Tagami:

As you know, on June 27, 2016, the City Council took two actions. First, the Council introduced an Ordinance (1) Amending The Oakland Municipal Code To Prohibit The Storage And Handling Of Coal And Coke At Bulk Material Facilities Or Terminals Throughout The City Of Oakland And (2) Adopting California Environmental Quality Act (CEQA) Exemption Findings.

Second, the Council adopted the Resolution referenced in the subject line above. Attached please find a courtesy copy of the Resolution adopted by the City Council (with a couple of corrections of typographical errors). The executed Resolution, with the City Clerk's attestation and resolution number, will be provided when available. Please note that the Resolution provides in Section 9 that "[t]his Resolution shall only be effective if the Coal-Coke Ordinance is adopted, and, if the Coal-Coke Ordinance is adopted, shall become effective upon the effective date of the Coal-Coke Ordinance," and that the second reading of the Ordinance is being scheduled for July 19, 2016.

Please contact me at (510) 238-6654 or ccappio@oaklandnet.com if you have any questions

Sincerely,

Claudia Cappio
Assistant City Administrator

cc:
Doug Cole, Army Base Project Manager
Darin Ranelletti, Bureau of Planning, Deputy Director
Heather Klein, Planner
Mark Wald, Oakland City Attorney's Office

David Smith, Stice & Block, LLP
Terminal Logistics Solution

Attachments: Corrected/Adopted City Council Resolution (Awaiting Attestation/Resolution number)

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 JUN 28 PM 12: 11

Corrected
APPROVED AS TO FORM AND LEGALITY

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No._____C.M.S.

A RESOLUTION (A) APPLYING ORDINANCE NO. _____C.M.S. [AN ORDINANCE (1) AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE STORAGE AND HANDLING OF COAL AND COKE AT BULK MATERIAL FACILITIES OR TERMINALS THROUGHOUT THE CITY OF OAKLAND AND (2) ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION FINDINGS] TO THE PROPOSED OAKLAND BULK AND OVERSIZED TERMINAL LOCATED IN THE WEST GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE; AND (B) ADOPTING CEQA EXEMPTION FINDINGS AND RELYING ON THE PREVIOUSLY CERTIFIED 2002 ARMY BASE REDEVELOPMENT PLAN EIR AND 2012 ADDENDUM

WHEREAS, on June 12, 2012, the Oakland City Council, via Resolution No. 83930 C.M.S., approved the amended Oakland Army Base (OAB) Reuse Plan (Master Plan), including adopting the 2012 OARB Initial Study/Addendum to the 2002 Army Base Redevelopment Plan Environmental Impact Report, making related California Environmental Quality Act (CEQA) findings, and adopting the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP); and

WHEREAS, on July 3, 2012, the Oakland City Council approved, via Ordinance No. 13131 C.M.S., a Lease Disposition and Development Agreement ("LDDA") with Prologis CCIG Oakland Global, LLC, a Delaware Limited Liability Company, which provided for the development on approximately 130 acres of the Gateway Development Area of a mixed-use industrial (warehousing and logistics) and commercial, including billboard, maritime, rail, and open space project at the Oakland Army Base, on real property which real which was, is and will continue to be owned by the City, and other related matters; and

WHEREAS, on July 16, 2013 the Oakland City Council approved the Development Agreement By and Between City of Oakland and Prologis CCIG Oakland Global, LLC Regarding Property Commonly Known as "Gateway Development/Oakland Global" (the "DA"), via Ordinance No. 13183 C.M.S. (an Ordinance, As Recommended By The City Planning Commission, Authorizing The City Administrator To Execute A Development Agreement Between The City Of Oakland And Prologis CCIG Oakland Global, LLC, A Delaware Limited Liability Company, For The Development On Approximately 160 Acres In The Gateway Development Area Of The Former Oakland Army Base To Be In A Form And Content Substantially In Conformance With The Attached Documents); and

WHEREAS, Prologis CCIG Oakland Global, LLC ("Developer") is a joint venture consisting of Prologis, L.P. ("Prologis") and CCIG Oakland Global, LLC ("CCIG"); and

WHEREAS, the Developer, Prologis, CCIG, Oakland Bulk and Oversized Terminal, LLC ("OBOT") (collectively, "Developer Entities") are pursuing the development of a "Project" at the West Gateway "Project Site" (as those terms are defined in the DA) with, among other things, the Oakland Bulk Oversized Terminal ("Terminal"), as described in the DA, and are currently pursuing plans to ship, transport, store, load, unload, stockpile, transload and/or handle (collectively "Store or Handle," as defined in the Ordinance (1) Amending the Municipal Code to Prohibit the Storage and Handling of Coal and Coke at Bulk Materials Facilities or Terminals Throughout the City of Oakland and (2) Adopting CEQA Exemption Findings (the "Coal-Coke Ordinance")) Coal and/or Coke (as those terms are defined in the Coal-Coke Ordinance) at the Project Site, including in and around the Terminal and at the Project Site; and

WHEREAS, on February 16, 2016, pursuant to the authority of Council Ordinance No. 13131 C.M.S. and Council Ordinance No. 13283 C.M.S., City, as Landlord, and OBOT, as Tenant, entered into an Army Base Gateway Redevelopment Project Ground Lease for West Gateway (the "West Gateway Ground Lease") which provides for the lease, for a term of 66 years, of the "West Gateway Property," comprised of an approximately 26.02 acre portion of the former Oakland Army Base, and the "Railroad R/O/W Property," comprised of an approximately 7.82 acre portion of the former Oakland Army Base, all as more particularly set forth in the West Gateway Ground Lease; and

WHEREAS, the proposed Terminal may be considered a Coal or Coke Bulk Material Facility, as defined in the Coal-Coke Ordinance; and

WHEREAS, the DA, as well as the LDDA and the West Gateway Ground Lease (collectively "Agreements"), do not provide any right to Store or Handle *any and all* bulk goods, *nor any certain* bulk goods at the Project Site. Nor do the Agreements provide that the City may not prohibit actions to Store or Handle any particular bulk goods at the Project Site. Instead, the Agreements provide Developer certain rights regarding the *development* and *use* of the property at the Project Site, which development and use does not include any right per the Agreements to Store or Handle any particular bulk goods, as discussed below (all capitalized terms used below are as defined in the DA and Coal-Coke Ordinance) and in the record, including the June 27, 2016 City Council Agenda Report, incorporated herein by reference.

1. As set forth in Exhibit D-2-2 of the DA, the DA provides for the development of "[a] ship-to-rail terminal designed for the export of non-containerized bulk goods and import of oversized or overweight cargo ('Bulk Oversized Terminal')," and does not provide for the development of a Terminal for any and all bulk goods, or certain bulk goods. Thus, application of the Coal-Coke Ordinance to the Project, the Project Site and the Developer Entities (which includes any successors or assigns) (collectively, "Project Facilities and Tenants") does not impair any right granted by the City to any Developer Entity.

2. As set forth in Section 3.2 of the DA, the DA "vests in Developer the right to *develop* the Project in accordance with the terms and conditions of" the DA, City Approvals and Existing City Regulations, and provides that the "the permitted *uses* of each Phase of the Project, the density and intensity of use of each Phase, and the siting, height, envelope, and massing and size of proposed buildings in each Phase, shall consist only of those described in and expressly permitted by, and subject to all terms, conditions and requirements of, the City Approvals, the Subsequent Approvals, the LDDA, and the applicable Ground Lease for each Phase" [italics added], and does not provide any right to develop the Project to Store or Handle any and all bulk goods or any particular bulk goods. Thus, application of the Coal-Coke Ordinance to the Project Facilities and Tenants does not impair any right granted by the City to any Developer Entity.

3. As set forth in Section 3.4.1 of the DA, the "City shall not impose or apply any City Regulations on the *development* of the Project Site that are adopted or modified by City after the Adoption Date." The DA does not provide any right to develop the Project to Store or Handle any and all bulk goods or any particular bulk goods at the Project Site. Thus, application of the Coal-Coke Ordinance to the Project Facilities and Tenants does impair any right granted by the City to any Developer Entity.

   Further, Section 3.4.1 of the DA lists categories of regulations adopted or modified by the City after the Adoption Date, which would concern *development* of the Project Site, each of which further shows that application of the Coal-Coke Ordinance to the Project Facilities and Tenants does not impair any right granted by the City with respect to development of the Project Site.

   This list from Section 3.4.1, which is summarized below, describes types of development regulations:

   (i) application of the Coal-Coke Ordinance is not inconsistent or in conflict with the intent, purpose, terms, standards or conditions of the DA; (ii) application of the Coal-Coke Ordinance will not materially change, modify or reduce the permitted uses of the Project Site[1], the siting, height, envelope, massing, design requirements, or size of the proposed buildings in the Project, or provisions for City fees or exactions; (iii) application of the Coal-Coke Ordinance will not materially increase the cost of development of the Project; (iv) application of the Coal-Coke Ordinance will not materially change or modify, or interfere with, the timing, phasing, or rate of development of the Project; (v) application of the Coal-Coke Ordinance will not materially interfere with or diminish the ability of a Party to perform its obligations under the City Approvals, including the DA, or Subsequent Approvals, or expand, enlarge or accelerate Developer's obligations under the City Approvals, including the DA, or the Subsequent Approvals; or (vi) application of the Coal-Coke Ordinance will not materially modify, reduce or terminate the rights vested in City Approvals or the Subsequent Approvals.

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1 Chapter 17.101F of the Oakland Planning Code lists permitted and conditionally permitted uses at the Project Site. Under section 17.10.584, Regional Freight Transportation Industrial Activities is a permitted use, but there is no provision permitting the Storage and Handling of *any and all* goods.

(ii) These types of development regulations listed section 3.4.1 do not limit the application of new regulations to regulate or prohibit any action to Store or Handle any particular goods; and

WHEREAS, separately and independently, Section 3.4.2 of the DA authorizes the City to impose subsequently adopted regulations, as an exception to Developer's vested rights under the DA, where the City determines, based on substantial evidence and after a public hearing, that certain standards have been satisfied. Specifically, Section 3.4.2 of the DA provides (capitalized terms used below are as defined in the DA and the Coal-Coke Ordinance):

> "Notwithstanding any other provision of this Agreement to the contrary, City shall have the right to apply City Regulations adopted by City after the Adoption Date, if such application (a) is otherwise permissible pursuant to Laws (other than the Development Agreement Legislation), and (b) City determines based on substantial evidence and after a public hearing that a failure to do so would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety. The Parties agree that the foregoing exception to Developer's vested rights under this Agreement is in no way intended to allow City to impose additional fees or exactions on the Project, beyond the City Fees described below in Section 3.4.5, that are for the purpose of general capital improvements or general services (except in the event of a City-wide emergency)."

The City Council thus finds and determines that, pursuant to DA Section 3.4.2, the Coal-Coke Ordinance may be applied to the Project Facilities and Tenants as an exception to any vested right Developer or any Developer Entity might claim, including for reasons stated herein and in the record, including the June 27, 2016 City Council Agenda Report, incorporated herein by reference; and

WHEREAS, on June 17, 2014 the Oakland City Council, at a duly noticed public meeting, adopted Resolution No. 85054 C.M.S. (A Resolution to Oppose Transportation of Hazardous Fossil Fuel Materials, including Crude Oil, Coal, and Petroleum Coke, Along California Waterways, Through Densely Populated Areas, Through the City of Oakland); and

WHEREAS, a duly noticed public hearing was held at a special meeting of the City Council on September ~~15~~ 21, 2015, regarding types of coal and coke products that are transported, the public health and safety impacts, and other impacts, of the transportation, transloading, handling and export of those products in and through the City of Oakland, the adequacy of existing regulations, and the City's ability to regulate the transportation and handling of such products; and

WHEREAS, additional written materials were submitted by interested parties; and

WHEREAS, a duly noticed public hearing was held at a special meeting of the City Council on May 9, 2016, regarding the health and safety impacts of fuel oils, gasoline and/or

crude oil products, including without limitation the public health and/or safety impacts of transportation, transloading, handling and/or export of fuel oil, gasoline, and crude oil products, the adequacy of existing regulations and the City's ability to regulate the transportation and handling of such products; and

WHEREAS, additional written materials were submitted by interested parties, including materials relating to coal and coke; and

WHEREAS, the City undertook an independent evaluation of the evidence submitted during and after the aforementioned public hearings and meetings and reviewed other relevant evidence; and

WHEREAS, based upon its independent evaluation of the evidence, the City has determined that pre-existing local, state and/or federal laws are inapplicable and/or insufficient to protect and promote the health and safety of the City's citizens, residents, workers, employers and/or visitors (hereafter called "Constituents"), and for such reasons (among others) has introduced the Coal-Coke Ordinance and, by the adoption of this Resolution resolves to apply the Coal-Coke Ordinance to the Project Facilities and Tenants, and each of them, and/or any Owner or Operator of a Coal or Coke Bulk Material Facility (as defined in the Coal-Coke Ordinance), upon the effective date of the Coal-Coke Ordinance (as stated more specifically in the resolves set forth below); and

WHEREAS, based upon its independent evaluation of the evidence, the City has also determined that pre-existing local, state and/or federal laws are inapplicable and/or insufficient to protect and promote the general welfare of the City's Constituents; and

WHEREAS, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations in respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect the health, safety, and/or general welfare of its Constituents; and

WHEREAS, Section 106 of the Oakland City Charter provides that the City has the right and power to make and enforce all laws and regulations with respect to municipal affairs; and

WHEREAS, numerous policies supporting protecting the health, safety and/or general welfare of Oakland's Constituents are contained in the Open Space, Conservation and Recreation Element, Public Safety Element and 1998 Land Use and Transportation Element (LUTE) of the City's General Plan, as well as the Oakland Planning Code, Oakland Municipal Code, and Oakland's Energy and Climate Action Plan; and

WHEREAS, pursuant to Chapter 657 of the Statutes of 1911, as amended, the Oakland Army Base Public Trust Exchange Act (Chapter 664 of the Statutes of 2005, as amended) ("Exchange Act"), and the public trust land exchange effectuated pursuant to the Exchange Act, the City holds the 16.7 acre waterfront portion of the Gateway Development Area ("Parcel E") in trust for the people of California. Under the public trust doctrine, the power of the State of California to control, regulate, and utilize public trust lands when acting within the terms of the

public trust is absolute. As the State's grantee, the City has a duty to administer the public trust with respect to Parcel E and may not delegate that responsibility to any other party; and

WHERAS, the Developer Entities (both in an Oakland Bulk and Oversized Terminal March 1, 2016 letter to Oakland City Council President Gibson-McElhaney and a Stice-Block (Developer's attorneys) April 19, 2016 letter to State Senator Bob Wiekowski) acknowledged that the City has the independent police powers, separate and distinct from DA Section 3.4.2, to protect and promote the health and/or safety of its Constituents and thus has a right to adopt legislation, like the Coal-Coke Ordinance, and apply it to the Project, the Project Facilities and Tenants; and

WHEREAS, this Resolution is supported by sufficient and substantial evidence and meets the appropriate legal standards of the DA, the Oakland City Charter, and the City's General Plan and other land use plans/policies, Public Trust Doctrine, and/or police power; and

WHEREAS, this Resolution was considered at a duly noticed public hearing, during a special meeting of the City Council on June 27, 2016, where interested parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing was closed by the City Council on June 27, 2016; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The recitals contained in this Resolution are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

Section 2. The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that this Resolution is (1) not a Project under the California Environmental Quality Act ("CEQA") and is therefore exempt pursuant to CEQA Guidelines section 15378; (2) exempt from CEQA pursuant to CEQA Guidelines sections 15307 (action to protect natural resources); 15308 (action to protect the environment); and/or 15061(b)(3) ("Common Sense" exemption, no reasonable possibility of a significant effect on the environment); and/or (3) consistent with the 2012 Army Base Addendum and thus no further CEQA review is required pursuant to CEQA Guidelines section 15162-15164. Each of the foregoing provides a separate and independent basis for CEQA compliance and when viewed collectively provides an overall basis for CEQA compliance.

Section 3. The Coal-Coke Ordinance applies to the Project Facilities and Tenants and each of them, and/or any Owner or Operator of a Coal or Coke Bulk Material Facility (as defined in the Coal-Coke Ordinance), because Developer Entities have no right, under the DA or otherwise, not to be subject to the Coal-Coke Ordinance. The application of the Coal-Coke Ordinance does not impair any vested right regarding development or use of the subject property and thus falls outside the limitations on subsequent regulations, including as set forth in Exhibit D-2-2 and Sections 3.2 and 3.4.1 of the DA.

Section 4. Separately and independently, the Coal-Coke Ordinance applies to the Project Facilities and Tenants, and each of them, and/or any Owner or Operator of a Coal or Coke Bulk Material Facility (as defined in the Coal-Coke Ordinance), because the City Council hereby finds and determines, based on substantial evidence in the record, after conducting public hearings, that failure to apply the Coal-Coke Ordinance to the Project Facilities and Tenants, and each of them, and/or to any Owner or Operator of a Coal or Coke Bulk Material Facility (as defined in the Coal-Coke Ordinance), would place existing and/or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health and/or safety (as stated in the DA) if the Project Site is developed with a Coal or Coke Bulk Material Facility.

In addition, the City Council incorporates by reference and adopts each of the health and/or safety findings set forth in section 8.60.020(B)(1) of the Oakland Municipal Code, which was introduced and adopted as part of Section 3 of Ordinance No. _____ C.M.S [AN ORDINANCE (1) AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE STORAGE AND HANDLING OF COAL AND COKE AT BULK MATERIAL FACILITIES OR TERMINALS THROUGHOUT THE CITY OF OAKLAND AND (2) ADOPTING CEQA EXEMPTION FINDINGS], and finds and determines they are expressly applicable to the Project Facilities and Tenants, and each of them.

Each individual finding presented in this Section 4 constitutes a separate and independently sufficient basis to adopt the Resolution. The City Council finds and determines that each of the findings in this Section 4 is separately and independently adopted and expressly applicable to the Project Facilities and Tenants, and each of them and should a court of competent jurisdiction determine than any particular finding(s) is or are insufficient to support the adoption of this Resolution, such determination shall have no effect on the validity of the remaining findings and their applicability to the Project Facilities and Tenants, and each of them.

Moreover, when viewed collectively, the health and/or safety findings in this Section 4 constitute an overall basis to support adoption of the Resolution.

Section 5. If any party with a legal interest in the DA, including without limitation any party to the DA or successor or assign, seeks to challenge the City's authority to apply the Coal-Coke Ordinance, it must first comply with the provisions of the DA.

Section 6. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption and Notice of Determination with the appropriate agencies.

Section 7. Nothing in this Resolution shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 8. The record before this Council relating to this Resolution and supporting the findings made herein includes, without limitation, the following:

1. All final staff reports, and other final documentation and information produced by or on behalf of the City, including without limitation supporting technical studies and all related/supporting final materials, and all final notices relating to aforementioned public hearings and meetings;
2. All oral and written evidence received by the City regarding the subject matter of this Ordinance through the close of the public hearing on June 27, 2016; and
3. All matters of common knowledge and all official enactments and acts of the City, such as (a) the City's General Plan; (b) the Oakland Municipal Code and Planning Code; (c) other applicable City policies and regulations; and (d) all applicable state and federal laws, rules and regulations.

The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Planning and Building Department –Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland California.

Section 9. This Resolution shall only be effective if the Coal-Coke Ordinance is adopted, and, if the Coal-Coke Ordinance is adopted, shall become effective upon the effective date of the Coal-Coke Ordinance.

Section 10. The provisions of this Resolution are severable. If a court of competent jurisdiction determines that any word, phrase, clause, sentence, paragraph, subsection, section, chapter or other provision (collectively called "Part") is invalid, or that the application of any Part of this Resolution to any person or circumstance is invalid, such decision shall not affect the validity of the remaining Parts of this Resolution. The City Council declares that it would have adopted this Resolution irrespective of the invalidity of any Part of this Resolution or its application to such persons or circumstances have expressly excluded from its coverage.

1921827v24

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST:_____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California