U.S. Department of Transportation
Office of the Secretary of Transportation

U.S. Environmental Protection Agency
External Civil Rights Compliance Office
Office of General Counsel

July 18, 2017

Ms. Yana Garcia
Mr. Paul Cort
Ms. Adenike Adeyeye
Earthjustice
50 California Street
Suite 500
San Francisco, CA 94111

Re: Notification of Acceptance for Investigation of Administrative Complaint (DOT# 2017-0093, EPA File Nos. 13R-17-R9 (City of Oakland) and 14R-17-R9 (Board of Port Commissioners and Port of Oakland))

Dear Ms. Garcia, Mr. Cort, and Ms. Adeyeye:

This is to notify you that the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), have accepted for investigation the complaint filed by Earthjustice on behalf of West Oakland Environmental Indicators Project (Complainant) against the City of Oakland (City) and the Board of Port Commissioners and Port of Oakland (the Board and Port are collectively referred to as the Port). The complaint was received on April 5, 2017, and alleges violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 C.F.R Part 21) and EPA (40 C.F.R. Part 7).

Pursuant to DOT's and EPA's nondiscrimination regulations, DOCR and ECRCO conduct preliminary reviews of administrative complaints received for acceptance, rejection, or referral to the appropriate agency. *See* 49 C.F.R. § 21.11(c) and 40 C.F.R. § 7.120(d)(1). Complaints must meet the Agencies' jurisdictional requirements to be accepted for investigation. *See* 49 C.F.R. § 21.11(c) and 40 C.F.R. §§ 7.15 and 7.120(b). After careful consideration, DOCR and ECRCO have determined that the complaint meets the jurisdictional requirements of both Agencies, and therefore the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of

color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

2. Whether the City's and Port's methods, including their public participation processes, for approving and authorizing new development and expanded activities at the Port of Oakland and Oakland Army Base subject the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

The investigation will be conducted in accordance with DOT's *External Civil Rights Complaint Processing Manual* and EPA ECRCO's *Case Resolution Manual*. The decision to investigate the issues above does not constitute a decision on the merits of the complaint. DOCR and ECRCO are neutral fact-finders and will begin a joint process to gather the relevant information, discuss the matter further with you (or your designee) and the recipients, as appropriate, and determine next steps utilizing the Agencies' internal procedures. In the intervening time, DOT and EPA will provide the recipients with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of the letter. *See, e.g.,* 40 C.F.R. § 7.120(d)(1)(ii-iii).

This does not foreclose resolution of matters raised in the complaint through informal resolution, including alternative dispute resolution (ADR). Both DOT's and EPA's nondiscrimination regulations provide that DOCR and ECRCO will attempt to resolve complaints informally whenever possible. 49 C.F.R. § 21.11(d); 40 C.F.R. § 7.120(d)(2). Accordingly, DOCR and ECRCO are willing to discuss, at any point during the process, offers to informally resolve the complaint. We may also be contacting both you (or your designee) and the recipients in the near future to discuss potential interest in informal resolution, including ADR. For a more detailed explanation of DOCR's and ECRCO's complaint and resolution processes, we invite you to review DOCR's External Civil Rights Complaint Processing Manual, available at https://www.transportation.gov/sites/dot.gov/files/docs/externalcomplaintmanual-final_1.pdf, and ECRCO's Case Resolution Manual, available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOCR and ECRCO.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's DOCR, or Ericka Farrell, Case Manager in EPA's ECRCO, with any questions about the investigation.

Ms. Garcia, Mr. Cort, and Ms. Adeyeye

Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Farrell can be reached at (202) 564-0717, or farrell.ericka@epa.gov.

Sincerely,

Charles E. James, Sr.
Director
Office of the Secretary of Transportation
Departmental Office of Civil Rights
U.S. Department of Transportation

Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency

cc:

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
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