UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

May 15, 2018

Return Receipt Requested
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In Reply Refer to:
EPA File No. 26NOD-15-R10

Mayor Jennifer Gregerson
The City of Mukilteo
11930 Cyrus Way
Mukilteo, Washington 98275

Re: **Rejection of Administrative Complaint, EPA File No. 26NOD-15-R10**

Dear Mayor Gregerson:

On September 9, 2015, the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) received a complaint alleging that the City of Mukilteo's Community Development Department ("City of Mukilteo") had violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code §§ 2000d *et seq.* (Title VI), and Section 504 of the Rehabilitation Act of 1973 (Section 504) and the EPA's nondiscrimination regulation (see 40 C.F.R. Part 7) on the bases of national origin and disability by approving the placement of a cell tower installation in close proximity to the Complainant's home, denying the request for construction of a planned dwelling addition (driveway and easement), and not providing direct notice to specific individuals regarding a public meeting about the cell tower approval. Title VI prohibits discrimination based on race, color, or national origin in federally assisted programs or activities. Section 504 prohibits discrimination based on disability in federally assisted programs or activities. After careful review, ECRCO has concluded that an investigation in this case is not justified in light of the facts presented. Accordingly, this matter is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

In addition to the above factors, ECRCO will also consider whether a complaint allegation (including any additional information provided by the Complainant) provides information sufficiently grounded in fact. Where a complaint allegation is not sufficiently grounded in fact, ECRCO may conclude that an investigation is unjustified, and may reject a complaint on this basis.[1]

Since the filing of the complaint, the Complainant has responded to ECRCO's requests for additional information on the events pertinent to the allegations. Specifically, ECRCO sent the Complainant a letter dated December 30, 2015 requesting clarification to determine how the Complainant and others in the Complainant's household are affected by the City of Mukilteo's approval of the placement of the cell tower based on disability status, how the Complainant and other individuals were discriminated against on the basis of national origin, and to identify the alleged discriminatory acts committed by the City of Mukilteo. In addition, through ongoing communication with the Complainant, ECRCO has sought information regarding the Complainant's national origin claim and the city's interaction with the Complainant during the public participation process occurring in connection with this cell tower. Accordingly, the Complainant responded to questions on these topics in written responses dated January 22, 2016, by e-mail on February 15, 2017, and through conversations via telephone dating back to the time of the complaint filing.

However, after evaluating the description of the alleged discriminatory acts, the facts presented, and our jurisdictional requirements and other considerations noted above, ECRCO will not accept this administrative complaint for investigation. In reference to the approval of the cell tower installation in close proximity to the Complainant's home in which individuals with disabilities live, the Complainant provided a description of the likelihood of the cell tower falling on the Complainant's dwelling and the adverse health effects that could be caused by the cell tower. Based on the information provided, ECRCO has determined that this allegation is not appropriate for investigation because it is too speculative in nature.

In correspondence and supporting documents submitted to ECRCO, the Complainant raised a separate allegation to the effect that the City of Mukilteo had denied the Complainant's request to build an extension onto the Complainant's home which was necessary to accommodate the disabilities of the Complainant's family members. Based on the information that the Complainant provided, the City reviewed and considered the Complainant's request and provided a response in a letter dated July 25, 2016. The letter provides the City's justification and a non-discriminatory basis for the denial of the Complainant's request. For example, the City stated that "no individual, regardless of abilities, would be permitted to construct a single-family residence over a utility easement."[2] After further review we have determined that the Complainant's description of the reasonable accommodation request to the City of Mukilteo and its subsequent decision does not describe a discriminatory act that if true would violate EPA's nondiscrimination regulation.

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[1]See ECRCO's *Case Resolution Manual*, Section 2.6 at 12. https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

[2] Letter from Karl Almgren, Assistant Planner, City of Mukilteo Planning and Community Development Department to (b) (6) Privacy (July 25, 2016)

Finally, in response to ECRCO questions the Complainant described receiving notice of the hearing on the cell tower permit and collecting the signatures of neighbors on a petition opposing the cell tower. The Complainant stated that the City of Mukilteo failed to notify neighbors who had signed the petition of the date and time of a hearing on the cell tower. While the complaint describes that the Complainant and the Complainant's neighbors did not want the City of Mukilteo to issue a permit for construction of the subject cell tower, the facts presented remain unclear regarding the Complainant's claims of discrimination based on either disability or national origin. Specifically, no information was provided about whether the neighbors are part of a protected class or if the Complainant was alleging that the neighbors were being discriminated against by the City of Mukilteo. This allegation does not describe a discriminatory act that would violate EPA's nondiscrimination regulation. For these reasons, the ECRCO is closing the case as of the date of this letter.

If you have questions regarding this letter, please contact Brittany Robinson, Case Manager, at 202-564-0727, by e-mail at robinson.brittany@epa.gov or by mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office, Mail Code 2310A, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

Sincerely,

for

Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Michelle Pirzadeh
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