By electronic and certified U.S .mail

April 4, 2017

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Re: **Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d**

On behalf of the communities of West Oakland, the West Oakland Environmental Indicators Project (WOEIP or "Complainant") submits this Complaint regarding the City of Oakland's ("City") pattern of neglect and systemic disregard for the health and wellbeing of West Oakland's residents, as demonstrated by its continuous authorizations of expanded freight infrastructure activities at the Port of Oakland and the former Oakland Army Base ("OAB") while failing to ensure adequate health and safety protections for the surrounding community. Complainant also files this complaint against the Port and the Board of Port Commissioners (collectively referred to as "Port"), for continuously expanding the Port's maritime, shipping, and transport activities in a manner that similarly exposes West Oakland residents to severe air pollution emissions without adequate mitigation.

The City and Port have engaged in the activities described in this Complaint to manipulate decision making and push through harmful expansions of freight activities for decades. Both parties have refused to engage in a meaningful analysis or process by which to address the negative health and environmental implications of their actions. Time and time

again, both the City and Port have dismissed the consistent input and opposition to their actions from directly impacted West Oakland residents, nearly 80% of whom are people of color, as well as from other agencies concerned about the problems such activities are creating.

The most recent example of the actions that are the subject of this Complaint is the City's approval of the first of a series of development-specific air quality management plans authorizing the construction of a new large-scale global trade and logistics development project located on OAB property. On October 4, 2016, the City Administrator approved a construction management plan for the Northeast Gateway development project site of the OAB, allowing developers, Prologis and the California Capital and Investment Group ("CCIG") to break ground on November 1, 2016, and begin construction for an expansive new warehouse and logistics development project – the "Oakland Global Logistics Center" – the full effects of which neither the City nor the Port have fully analyzed or addressed. This approval, and the City's continued authorization of new development and expanded activities at the Port and OAB create an unjustified disproportionate adverse impact on the basis of race, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and the implementing regulations of the United States Department of Transportation ("DOT"), 49 C.F.R. Part 21, and the United States Environmental Protection Agency ("EPA"), 40 C.F.R. Part 7.

Title VI prohibits entities receiving federal financial assistance from engaging in activities that subject individuals to discrimination on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Both the City and Port receive federal financial assistance from DOT, EPA and other federal agencies.[1] They are, therefore, subject to Title VI's prohibition against discrimination. The City and Port violate that prohibition by forcing through freight expansion projects that disproportionately subject the communities of color that surround both the Port and OAB properties to air pollution and other serious health threats on the basis of their race.

As an initial step in addressing the violations set forth in this complaint, Complainant requests that the DOT Departmental Office of Civil Rights and the EPA Office of Civil Rights accept this Complaint, and investigate whether the City and Port have indeed violated, and/or continue to violate Title VI of the Civil Rights Act and its implementing regulations in issuing their approvals to expand freight-related activities at the Port and OAB.[2] For reasons of economy, Complainant further requests that these investigations be consolidated and that EPA and DOT collaborate and coordinate the development and implementation of remedial approaches designed to address the City's and Port's violations. Because both the City and Port are most consistently funded by DOT in matters pertaining to the approvals and the activities at issue here, DOT is well poised to take the lead role at the federal level. Complainant also includes the Civil Rights Division of the Department of Justice in this Complaint, in anticipation

[1] While not the subject of this complaint, the Port, which operates as a fully independent department of the City, receives substantial federal assistance in the form of monetary grants and gifts consisting of real property from the Department of Defense, the United States Army, and the United States Department of Homeland Security.

[2] Complainant also specifically requests that if either DOT or EPA rejects this complaint, the other agency conduct an investigation alone or jointly with other federal agencies, as appropriate, in accordance with federal regulations. *See* 28 C.F.R. § 42.408(b) ("Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency . . . .").

that they too would play an active role in coordinating these federal investigative and enforcement actions, consistent with the mission of the Federal Coordination & Compliance Section.

In order to remedy the violations set forth in detail below, Complainant requests that DOT and EPA condition all future grants and awards of federal funds to the City and Port on both entities furnishing adequate assurances that their actions with respect to the activities taking place at the Port and OAB properties will address disproportionate impacts on the surrounding community. Specifically, WOEIP requests that the City and Port implement and adhere to appropriately tailored, updated mitigation measures that will address the harmful externalities of the Port's industrial and freight activities – including any and all new and expanded activities occurring at the OAB – and that both the City and Port commit to a meaningful, continuous process for receiving and incorporating input from the West Oakland community.

I. PARTIES

A. Complainant

WOEIP is a neighborhood resident-led, community-based environmental justice organization located in West Oakland, California. The organization is dedicated to achieving healthy homes, healthy jobs, and healthy neighborhoods for all who live, work, learn and play in their community. Through engaging in research projects and participating in agency advisory committees as well as stakeholder groups, WOEIP focuses on leveraging community power to support residents in developing and achieving their own vision for healthy neighborhoods, which includes, among other things, clean soil and vibrant surroundings, clean air and clean water, and a resident-led comprehensive vision for redevelopment and economic revitalization in and around West Oakland.[3]

B. Recipients

The City is a municipal corporation, ordained and established under the California Constitution. *See* Charter of the City of Oakland art. I. § 100[4]; *see, also*, Cal. Const. art. XI, § 5. As such, the City has the right and the power to make and enforce all laws and regulations relating to its municipal affairs. Charter of the City of Oakland art I. § 106. The City is a recipient of federal funds, as detailed below.

The Port was established in 1927. It operates as a fully independent City department, created by the City pursuant to the City's governing charter. Charter of the City of Oakland art. VII, §700. In creating the Port Department, the City vested "exclusive control and management" of the Port in the Board of Port Commissioners, which is comprised of members nominated by

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[3] *See* West Oakland Environmental Indicators Project website, *available at* https://www.woeip.org (last accessed, March 28, 2017).
[4] *Available at*: https://www.municode.com/library/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA_ARTVIIPOOA (last accessed on March 28, 2017).

the City's Mayor and appointed by the City Council. *Id*. §701. The Board of Port Commissioners has "complete and exclusive power" over the "Port Area." *Id*. All moneys appropriated by the Board and all revenue from the operation of the Port are under the exclusive control of the Board and are deposited in a special "Port Revenue Fund" in the City's treasury. *Id.* §§ 717(2), (3). Like the City, the Port is a recipient of federal funds, as detailed below.

II. JURISDICTION

The prohibition against racial discrimination set forth in Title VI applies to all recipients of federal funds: "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 200d. The acceptance of federal funds in itself creates an obligation on the part of the recipient to comply with Title VI and the federal agencies' implementing regulations.

As explained below, the City and Port are recipients of federal funds and implement programs or activities receiving continuous federal financial assistance. They are, therefore, subject to the requirements of Title VI and its applicable implementing regulations.

A. Program or Activity

Title VI defines a program or activity as "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance." 42 U.S.C. § 2000d-4a. Accordingly, if any part of a listed entity receives federal funds, the whole entity is covered by Title VI. *Ass'n. of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-5 (9th Cir. 1999), rev'd in part on other grounds, 231 F.3d 572 (9th Cir. 2000) (en banc).

The actions undertaken by the City and Port are taken as part of a program or activity because the City is its own municipal government entity, and the Port is a department of the City as set forth in the City's charter. Charter of the City of Oakland art. VII, §§ 700, 701. Indeed, the City created the Port's Board of Commissioners specifically to act for and on behalf of the City in any matter within the jurisdiction of the Board, which includes all areas that are part of the Port's operations. Charter of the City of Oakland art. VII, §701. Both the City and Port, including the Board of Port Commissioners, receive federal funds, as explained below.

The City Administrator is also appointed by the City's Mayor, subject to confirmation by the City Council, and is directly accountable to the Mayor's office. *See*, City of Oakland Municipal Code, Title 2, Ch. 2.29, sec. 170 (establishing the Office of the City Administrator). The Administrator is responsible for the day-to-day administrative and fiscal operations of the City, and directs City agencies and departments to ensure the goals and policy directives of the Mayor and City Council are implemented. *See, id*. The responsibilities of the Administrator's Office include: enforcing all laws, ordinances, and policies of the Council; attending all meetings of the Council, Council Committees, boards, and commissions; making recommendations to the Council concerning City affairs; controlling and administering the financial affairs of the City and keeping the Council apprised of these affairs; preparing or directing preparation of the plans,

specifications, and contracts for work the Mayor or Council may order; and coordinating all projects, policies, and directives assigned to the Administrator by the Council or by the Mayor.[5] Accordingly, the specific actions and approvals undertaken by the City Administrator are also part of a program or activity, as they are taken with the full authority of the City. As outlined below, the infrastructure, shipping, transport, and logistics programs and activities approved by the City, Port, and the City Administrator that are the basis for this Complaint receive federal financial assistance.

B. Federal Financing/Federal Financial Assistance

The City and Port receive federal financial assistance as defined in DOT's and EPA's Title VI implementing regulations.

1. DOT Funds Received by the City and Port

DOT regulations define "[r]ecipient" as "any State . . . or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State . . . to whom Federal financial assistance is extended, directly or through another recipient. . . ." 49 C.F.R. § 21.23.

In Fiscal Year (FY) 2010, the City of Oakland received a considerable Transportation Investment Generating Economic Recovery (TIGER) planning grant in the amount of $2 million to support the City's estimated $9,220,000 planning efforts for "sustainable transit oriented planning" at the "[OAB] Redevelopment Area."[6] According to the grant description, DOT's grant of these funds was aimed at aiding the City's development of "an Infrastructure Master Plan", and associated environmental review, "to direct needed utilities and roadway improvements for the former [OAB]."[7] The project considered under the terms of this grant also involved a "Specific Plan" and associated environmental review "to guide future development in West Oakland" and to specifically develop a framework for addressing "undervalued and blighted land in the West Oakland community" where the per capita income was, in that year, less than fifty percent of the county average.[8]

DOT has also awarded substantial TIGER funds to the Port. For example, in FY 2012 DOT awarded the Port approximately $15 million in TIGER grant funds to develop a new Port

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[5] City of Oakland, *City Administration: Welcome*, available at: http://www2.oaklandnet.com/government/o/CityAdministration/index htm (last accessed March 30, 2017).
[6] *See*, United States Department of Transportation, *US DOT TIGER II Planning Grants*, *available at*: https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf (last accessed March 30, 2017).
[7] *See*, United States Department of Transportation, *US DOT TIGER II Planning Grants*, *available at*: https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf (last accessed March 30, 2017).
[8] *See*, United States Department of Transportation, *US DOT TIGER II Planning Grants*, *available at*: https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf (last accessed March 30, 2017).

Rail Terminal serving Port property.[9] Moreover, DOT consistently funds the Port with large grants specifically intended for airport improvements. While these funds do not directly benefit the OAB properties at issue here, the duration and scale of this funding is important to note. The following is a list of DOT's airport improvement program grants to the Port between FY 2008 and FY 2016:

FY 2008 - $11,967,919
FY 2009 - $18,317,487
FY 2010 - $15,706,402
FY 2011 - $7,559,904
FY 2012 - $32,753,747
FY 2013 - $18,245,770
FY 2014 - $41,578,114
FY 2015 - $11,395,060
FY 2016 - $7,324,847

In FYs 2013 and 2014, the Port was also sub-granted $983,928 and $312,263, respectively, in funds originating from DOT, but awarded to the California Department of Transportation (Caltrans) to pay for ongoing operations at the Port.[10]

2. EPA Funds Received by the City and Port

Similar to DOT's regulations, EPA's Title VI regulations define a "[r]ecipient" as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient . . . ." 40 C.F.R. § 7.25.

Between FY 2006 and FY 2010, the City received two consecutive two-year block grants totaling $800,000 over the course of four years, from EPA, to ensure brownfield cleanup, including clean up in and around the community of West Oakland.[11]

Starting in 2013, EPA awarded the Port $282,293 to reduce air pollution from the Port's gantry cranes, through EPA's National Clean Diesel Reduction Program.[12] In FY 2014 EPA also

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[9] *See* United States Department of Transportation, *TIGER 2012 Awards, available at:* https://www.transportation.gov/sites/dot.gov/files/docs/fy2012tiger_0.pdf (last accessed March 30, 2017).
[10] USASpending.gov, *Recipient Profile: Port of Oakland, available at:* https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2013 (last accessed March 30, 2017).
[11] *See*, USASpending.gov, *Recipient Profile: City of Oakland California, available at:* https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=137137977&FiscalYear=2010 (last accessed, March 30, 2017), and see USASpending.gov, *Award Summary: City of Oakland, available at*: https://www.usaspending.gov/transparency/Pages/AwardSummary.aspx?awardId=14192643 (last accessed, March 30, 2017).
[12] *See*, USASpending.gov, *Award Summary: Board of Port of Commissioners of the Port of* [sic], available at: https://www.usaspending.gov/transparency/Pages/AwardSummary.aspx?awardId=12519152 (last accessed, March 30, 2017).

awarded the Port and additional $415,932 through the same program,[13] and in FY 2015, EPA granted another $133,639 to the Port, to support the Port's continued efforts to reduce air pollution from port-related operations.[14]

C. Timeliness

This complaint is timely because it is based on the City's and the City Administrator's continuous and ongoing approvals of a series of construction and operation management plans concerning the OAB "Gateway" Redevelopment Project, which is one part of a multi-stage large scale development project called the Oakland Global Logistics Center development, and is likewise part of the Port's continued expansion of its shipping, receiving, storage distribution and freight transport activities. Both DOT and EPA instruct Title VI complainants to file their complaints within 180 days of the alleged discriminatory act.[15] 49 C.F.R. § 21.11(b) (DOT Title VI regulations); 40 C.F.R. § 7.120(b) (EPA Title VI regulations).

On October 4, 2016, the City approved a construction management plan that allowed Prologis and CCIG to break ground on the Northeast Gateway OAB site on November 1, 2016.[16] The operation management plan for the Northeast Gateway project, and the construction and operation management plans for the remaining "Gateway" areas of the OAB remain subject to ongoing similar approvals from the City. The City's October 4, 2016 action is, therefore, one of many piecemealed development-related approvals that will continue to occur.

This complaint is timely because it is filed within 180 days of the City's October 4, 2017 approval and subsequent construction at the Northeast Gateway site. Moreover, because the actions alleged in this Complaint are part of a long history of discriminatory actions that are both ongoing, and slated to continue in subsequent approval processes, Complaint requests that DOT and EPA waive any potential objections related to the 180-day deadline. 49 C.F.R. § 21.11(b); 40 C.F.R. § 7.120(b).

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[13] *See*, USASpending.gov, recipient profile for the "Port of Oakland" and "Board of Port Commissioners," FY 2014, DUNS no. 009235326, available at: https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2014 (last accessed, March 30, 2017).

[14] USASpending.gov, *Recipient Profile: Board of Port Commissioners of the Port of Oa* [sic], *available at:* https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2015 (last accessed, March 30, 2017).

[15] DOT and EPA, moreover, have the authority and the discretion to waive or extend the 180-day deadline. 49 C.F.R. § 21.11(b); 40 C.F.R. § 7.120(b).

[16] *See*, Annie Sciacca, *Oakland Army Base redevelopment project breaks ground*, East Bay Times, (November 1, 2016), *available at:* http://www.eastbaytimes.com/2016/11/01/oakland-army-base-redevelopment-project-breaks-ground/ (last accessed, March 30, 2017).

D. Other Prudential Factors and/or Jurisdictional Considerations

This Complaint satisfies all other jurisdictional and prudential considerations laid out in both DOT's and EPA's regulations implementing Title VI. The Complaint also meets EPA's guidance set forth its Interim Case Resolution Manual.[17]

Specifically, this Complaint is submitted to both agencies in writing, by and on behalf of a Complainant group that is authorized to submit such a complaint to redress the adverse impacts this group experiences directly and which other, similarly situated residents also experience as a result of both the Port's and City's violations of Title VI.

DOT and EPA have subject matter jurisdiction over this Complaint because it alleges discrimination based on race in violation of Title VI of the Civil Rights Act of 1964. This Complaint also contains unique civil rights allegations that have not been alleged in any court or administrative proceeding, and which are specific to the City's and Port's systemic pattern of issuing project approvals and/or engaging in activity at and surrounding the Port and OAB properties in a manner that causes disproportionate effects to the surrounding residential community, on the basis of race.

Moreover, this Complaint seeks unique relief from DOT and EPA — compliance with Title VI. Complainant asks DOT and EPA to investigate this Complaint and take steps to remedy noncompliance with Title VI by the City and Port, including conditioning any and all future federal funding. This relief is not available through other means.

III. FACTUAL BACKGROUND

A. The Residents and Community of West Oakland

1. West Oakland's History and Demographics

West Oakland is a diverse community with a rich history and a historically vibrant culture dating back to the late nineteenth century. In the 1800s and early 1900s, West Oakland was home to many European, Japanese, and Chinese immigrants, Mexicans, and a large number of African Americans who migrated from the South for jobs in the auto and rail industries. As military activities expanded at the OAB, and new job opportunities in the Port's shipyards increased, West Oakland experienced an even greater influx of mostly small-business growth,

[17] *See, e.g.*, United States Environmental Protection Agency, *Case Resolution Manual*, Chapter 2 (January 2017), *available at* https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf (last accessed, March 30, 2017).

which, in addition to the OAB's activities included many local shops that were owned by, and served, West Oakland residents.[18]

In the late 1900's, however, West Oakland experienced a decline in its relative economic vitality. [19] While it remains a mostly working-class community, the median household income in zip code 94607, which encompasses most of West Oakland today, is $35,837.[20] For comparison, the median income of Alameda County is $67,169.[21] Over 30% of individuals living in zip code 94607 live below the poverty level.[22] In Alameda County as a whole, only 13.5% of individuals live below the poverty level.[23] As *Figure 1* indicates, poverty has been a long term issue in West Oakland, with the entire community experiencing either persistent (five decades long), or frequent (three to four decades long), high poverty rates.

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[18] *See, e.g.*, Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Ch. 1.1 "[OAB] Location, History and Setting", p. 13 (July 31, 2012) (describing some of the historical background of the region, and in particular of the OAB, and its surroundings), *available at* http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829 (last accessed April 3, 2017).

[19] County of Alameda, CA, *Demographics, available at* https://www.acgov.org/about/demographics.htm (last accessed March 30, 2017); United States Census Bureau, *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, *available at* https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml (last accessed March 30, 2017).

[20] United States Census Bureau. *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, *available at* https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml (last accessed March 30, 2017).

[21] County of Alameda, CA, *Demographics, available at* https://www.acgov.org/about/demographics.htm (last accessed March 30, 2017).

[22] United States Census Bureau. *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, *available at* https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml (last accessed March 30, 2017).

[23] County of Alameda, CA, *Demographics, available at* https://www.acgov.org/about/demographics htm (last accessed March 30, 2017).

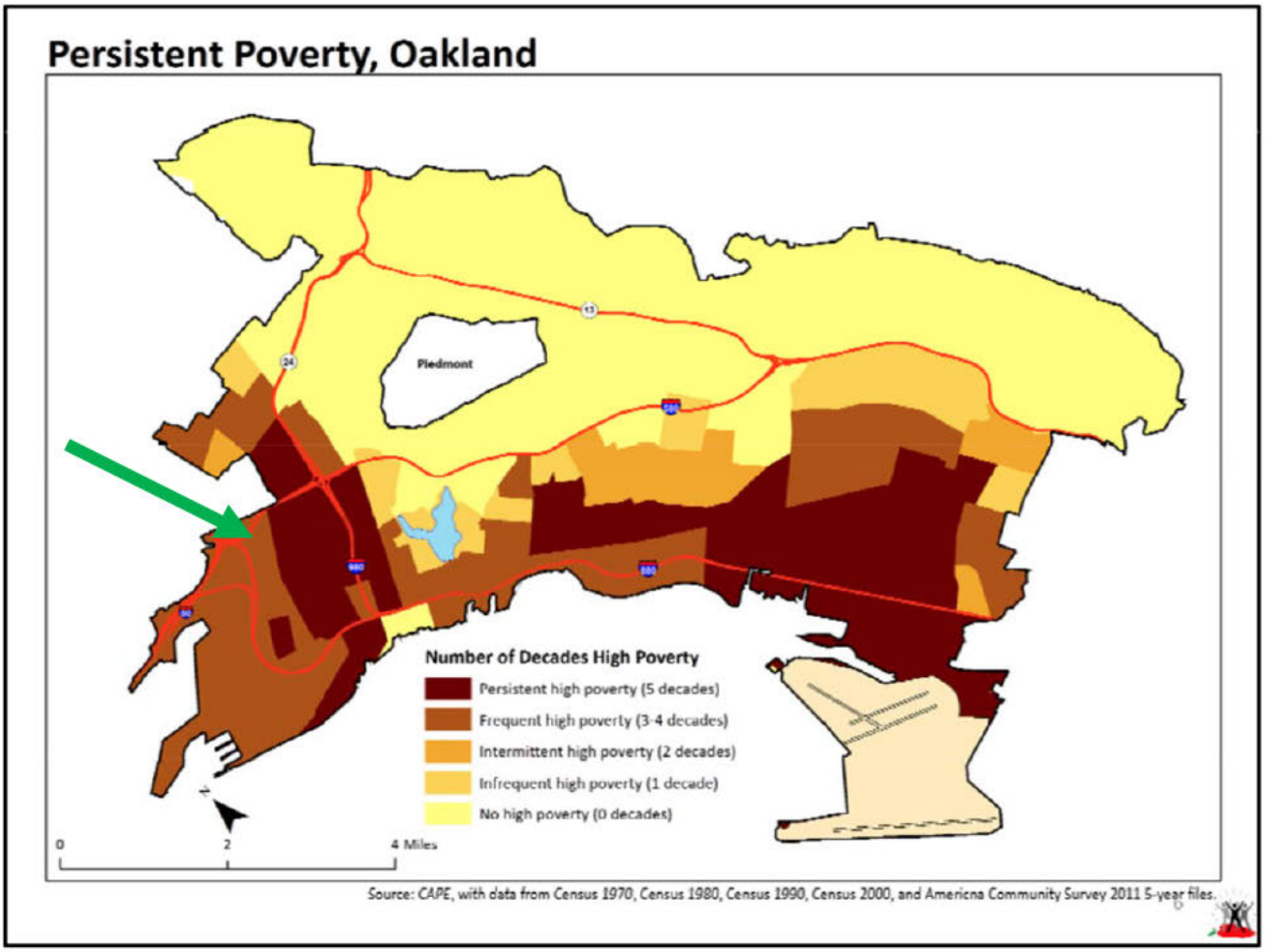

Figure 1 Map of areas of persistent poverty in Oakland (with arrow pointing to West Oakland).[24]

Most importantly for the purpose of this Complaint, and the allegations set forth herein, West Oakland remains primarily a community of color. Approximately 49 percent of West Oakland residents today are Black, 17 percent identify as Latino, 15 percent identify as White, and nearly 13 percent identify as Asian.[25] In Alameda County overall, 51 percent of Alameda County residents are White, only 12 percent are Black, 30 percent are Asian, and 23 percent are Latino.[26]

[24] Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015), p. 6.
[25] Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts,* West Oakland Resident Action Council (RAC) Meeting (September 5, 2015), p. 3.
[26] United States Census Bureau, *Quick Facts: Alameda County, California* (2015), *available at* https://www.census.gov/quickfacts/table/PST045216/06001 (last accessed March 30, 2017).

2. Health and Pollution Burdens Affecting West Oakland

The largely residential community of West Oakland is surrounded by the Port and OAB, and by freeways. Specifically, as shown in *Figure 2*, three interstate freeways, the I-580, I-880 and I-980 freeways, surround West Oakland with the Port and OAB surrounding the community to the West and South.

Figure 2 Map of the community of West Oakland.[27]

In addition to housing the Port, which is the fifth busiest container port in the United States, West Oakland is also home to two rail yards, with expansive and growing rail road tracks that are owned and operated by Union Pacific ("UP"), and the Burlington Northern and Santa Fe Railroad Company ("BNSF"). While not pictured above, West Oakland also has numerous trucking-based distribution centers and a host of related businesses including mechanical and body repair shops as well as large diesel gas stations that serve various activities taking place at the Port and OAB.

Thus, while this community has many aspects of unique physical beauty, including many nineteenth century Victorian-era historical buildings, an important and meaningful history, as

[27] City of Oakland, *West Oakland Specific Plan* (area map), *available at* http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK028334 (last accessed, April 3, 2017).

well as vibrant cultural traditions, today, its residents experience an overwhelming and disproportionate burden of health and environmental risks caused by the activities surrounding their homes and schools. For example, the Oakland Unified School District (OUSD) has identified the three elementary schools, two middle schools, and three high schools located in West Oakland and serving the West Oakland community as showing the highest "environmental stress indicators" based on students' exposure to poor air quality and inadequate access to healthy foods, among other environmental risks.

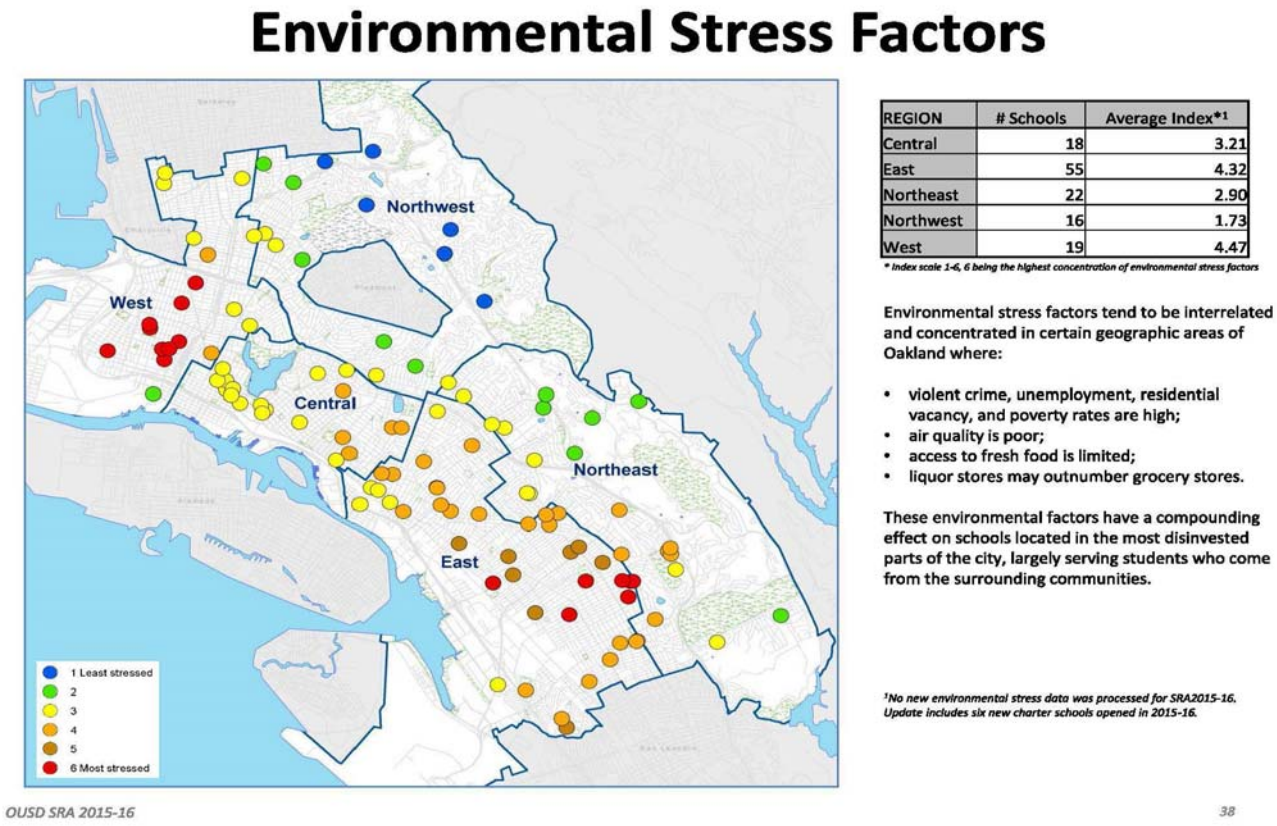

Figure 3 Environmental stress factors by school.

In addition, there are two preschools and at least one formal, reported day-care center, which, while not included in the OUSD map above, are located in close proximity to the Port and the

freeways surrounding West Oakland.[28] These childcare facilities are exposed to the same stress indicators, including poor air quality, as the OUSD-reported schools shown in *Figure 3*, yet with potentially even more devastating impacts, considering the age and size of the children attending these care facilities.

Notably, most of the pollution burden West Oakland residents shoulder directly results from the activities taking place at and around the Port and OAB. Trucks serving the Port bring heavy air pollutant emissions, including emissions of diesel particulate matter; the traffic they cause disrupts neighborhoods, and damages local streets that were not intended for heavy trucks.

Air pollution has been proven to cause and/or exacerbate respiratory and cardiovascular illness, and can trigger asthma attacks.[29] Diesel particulate matter emitted by heavy duty trucks and other freight vehicles and equipment like ships and trains, is a known carcinogen. The California Air Resources Board ("ARB") has found that West Oakland residents are "exposed to diesel particulate matter ambient concentrations that are almost three times the average background diesel particulate matter ambient concentrations in the [Bay Area Air Quality Management District]."[30] Indeed, West Oakland residents experience a lifetime potential cancer risk of 1,200 excess cancers per million due to diesel particulate matter emissions. In comparison, the ARB found an excess cancer risk due to diesel particulate matter of 480 excess cancers per million across the entire San Francisco Bay Area.[31] The risk that West Oakland residents face is nearly three times the risk that Bay Area residents generally face. Diesel particulate matter emissions from the Port alone are responsible for a risk of approximately 200 excess cancers per million.[32]

In 2008, the ARB conducted a diesel particulate matter Health Risk Assessment in West Oakland. The 2005 baseline emission inventory used in the assessment showed that heavy duty trucks accounted for 112 tons per year of diesel particulate matter emissions, or 13% of the total

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[28] Harriett Tubman Preschool is located on 3rd street, in the Hoover/Foster neighborhood of West Oakland, adjacent to the I-580 and I-980 intersections, which experience heavy traffic to reach the Port and Port facilities. See, map location, *available at*: https://www.google.com/maps/place/Harriet+R+Tubman+CDC/@37.8236086,-122.2731381,15z/data=!4m5!3m4!1s0x0:0x1b8f115e05028cb2!8m2!3d37.8236086!4d-122.2731381 (last accessed, March 30, 2017). The Baby Academy and Infant Day Care Center is also located in Wes Oakland's Prescott neighborhood, which is adjacent to the I-880 or "Nimitz Freeway" that feeds directly onto frontage roads serving the Port. See, map location, *available at*: https://www.google.com/maps/place/The+Baby+Academy+Infant+Care+%26+Preschool/@37.8094548,-122.2975516,15z/data=!4m5!3m4!1s0x0:0x891cc2ecd329e327!8m2!3d37.8094548!4d-122.2975516 (last accessed, March 30, 2017).

[29] Saffet Tanrikulu, Cuong Tran, and Scott Beaver, Bay Area Air Quality Management District, *Health Impact Analysis of Fine Particulate Matter in the San Francisco Bay Area* (September 2011), *available at* http://www.baaqmd.gov/~/media/files/planning-and-research/research-and-modeling/cost-analysis-of-fine-particulate-matter-in-the-bay-area.pdf (last accessed March 30, 2017).

[30] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).

[31] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 22, (December 2008).

[32] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).

diesel particulate matter emissions inventory for the West Oakland area, with the remaining diesel particulate matter emissions coming from trains and ships serving the Port area.[33] An estimated 2,800 medium sized, short distance trucks, also known as drayage trucks, serve the Port of Oakland multiple times per week, and there are approximately 10,000 truck trips to and from the Port, with an additional 1,400 truck trips daily between the Port and distribution centers in West Oakland.[34] These figures are expected to grow as the Port expands, which will result in additional truck traffic through the West Oakland community. Further expansions of the Port's activities will bring more ships and more trains to the area, further elevating the amount of diesel particulate matter in the air throughout West Oakland, and increasing the resulting adverse health impacts affecting West Oakland residents.

As demonstrated through ARB's 2008 Health Risk Assessment, truck traffic hurts communities and makes it more difficult to build thriving, resilient neighborhoods. People living on busy streets, with trucks rumbling by frequently, are more reluctant to go outside to exercise; residents have fewer opportunities to meet their neighbors and to build a close-knit community within their neighborhood.[35] If they are parents they are also more reluctant to let their children play outside. Closely connected communities can provide important physical and mental health benefits;[36] truck traffic impedes these benefits for residents of West Oakland.

Moreover, while diesel particulate matter emissions from the Port alone are responsible for approximately 200 excess cancers per million,[37] West Oakland residents are consistently exposed to a variety of other, cumulative impacts that result in poor health outcomes in the community. All-cause death rates in West Oakland are higher than all-cause death rates in the city of Oakland overall.[38] As a result, West Oakland has one of the lowest life expectancies of all communities in Oakland (see *Figure 4*).

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[33] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 15, Table 3 (December 2008).
[34] UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Air-6 (March 2010).
[35] UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Transportation-9 (March 2010) (showing that communities with higher traffic volumes are not as close-knit as communities with lower traffic volumes).
[36] UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Transportation-10 – Transportation-11 (March 2010).
[37] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).
[38] Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, p. 13, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).

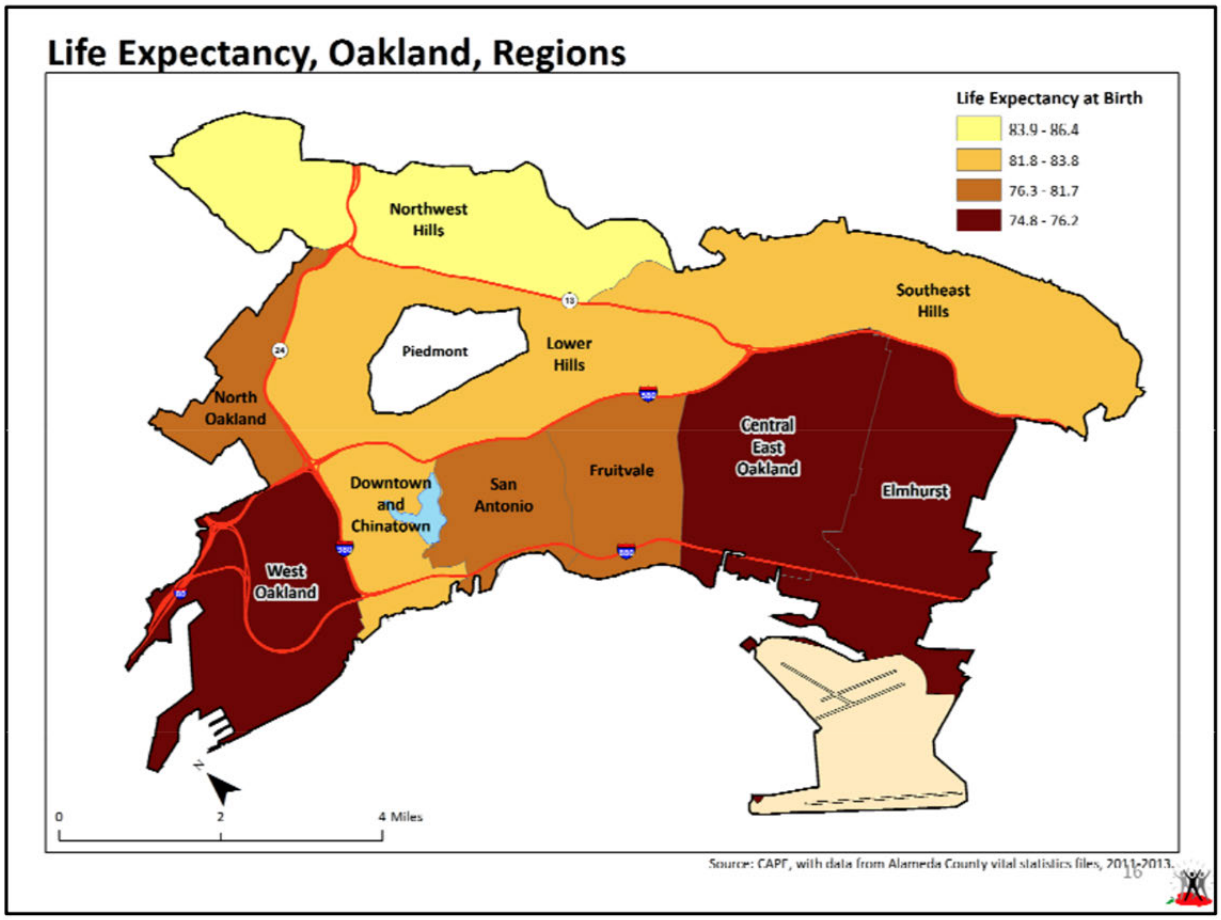

Figure 4 Life expectancies in Oakland's communities.[39]

When compared to other areas of Alameda County, West Oakland also has elevated rates of emergency room visits due to stroke-related and congestive heart failure hospitalizations, and asthma hospitalizations in children older than 5.[40]

B. History of the Port and Army Base

The Port is the fifth largest container port in the United States and the second largest in the State of California, behind the combined ports of Los Angeles and Long Beach. Established in 1927, the Port is home to 18 ship berths, 236 container cranes, two rail yards and approximately 500 pieces of cargo handling equipment, as well as 2,500 trucks. In 2016, the Port moved over 2 million 20-foot equivalent units of containers in and out of the Bay area.

[39] Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, p. 16, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).
[40] Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, pp. 9-12, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).

OAB is a 425-acre facility located along the Oakland waterfront, just north of the Port and south of the eastern portion of the San Francisco Bay Bridge.[41] It was originally commissioned to serve as a United States Army base in 1941, and during World War II it developed to serve as a major cargo port.[42] Following the end of the war, OAB continued to serve as a shipping and rail terminal, providing logistical support for the subsequent Korean, Vietnam and Persian Gulf wars.[43] In 1995 the United States Defense Base Closure and Realignment Commission recommended closure of OAB, and it officially closed OAB's operations as an army base in 1999.[44]

Following its decision to close the base, the United States Department of Defense designated a local reuse authority – the Oakland Army Base Reuse Authority – as the entity charged with the oversight of all post-closure redevelopment at OAB.[45] In order to assist in informing and influencing the ongoing land use changes at OAB, prior to the completion of OAB's closure, the Reuse Authority established the West Oakland Community Advisory Group (WOCAG).[46] In line with its purpose, the WOCAG met for over ten years to discuss and present community recommendations relating to the new uses and businesses that would benefit West Oakland residents. These recommendations were collected, reviewed an compiled by the Redevelopment Agency until its dissolution, and they were, to an extent, incorporated into the early planning stages for the OAB closure.

In 2000, the Oakland City Council designated OAB and its surrounding properties as a "Redevelopment Area," then under the jurisdiction of the City's Redevelopment Agency, the Port and the County of Alameda, pursuant to a Joint Powers Agreement. The closure process was guided by a "Preliminary Redevelopment Plan" that was formulated with some early input from the WOCAG.[47] Pursuant to this "Preliminary Redevelopment Plan", the City broadly committed to the "redevelopment, rehabilitation, and revitalization of the area within the boundaries of the [OAB]" and its surroundings. [48] The City also sub-divided OAB into two general development areas, shown in *Figure 5*, below. The first was a 140-acre "Gateway Development Area," situated in the north and northwest portion of the sub-district, owned by the City and the OAB Redevelopment Agency. [49] The second was a 170-acre "Port Development

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[41] Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Executive Summary, p. 1 (July 2012), *available at*: http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829 (last accessed April 3, 2017).
[42] *Id.*, p. 14.
[43] *Ibid*.
[44] *Ibid.*
[45] *Id.*, p. 15.
[46] *Id*, p. 16.
[47] *See* Redevelopment Plan for the Oakland Army Base Redevelopment Project, Adopted June 11, 2000, Amended and Restated on December 21, 2004 (Ordinance No. 12644 C.M.S.), and on June 7, 2005 (Ordinance No. 12672 C.M.S.), p. 2.
[48] City of Oakland, *Redevelopment Plan for the Oakland Army Base Redevelopment Project* (June 11, 2000)(Amended and restated December 21, 2004 and June 7, 2005), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak030544.pdf.
[49] *See* LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, pp. 19-20 (May 2012), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak035061.pdf.

Area" located in the west and southeast portions of the OAB, owned and operated by the Port.[50] In addition to these two main sub-areas, the City also designated two additional sub-districts – the "Maritime" sub-district, which is comprised of 1,290 acres owned and operated by the Port; and the "16th and Wood" sub-district – an additional 41 acres owned by various private entities.[51]

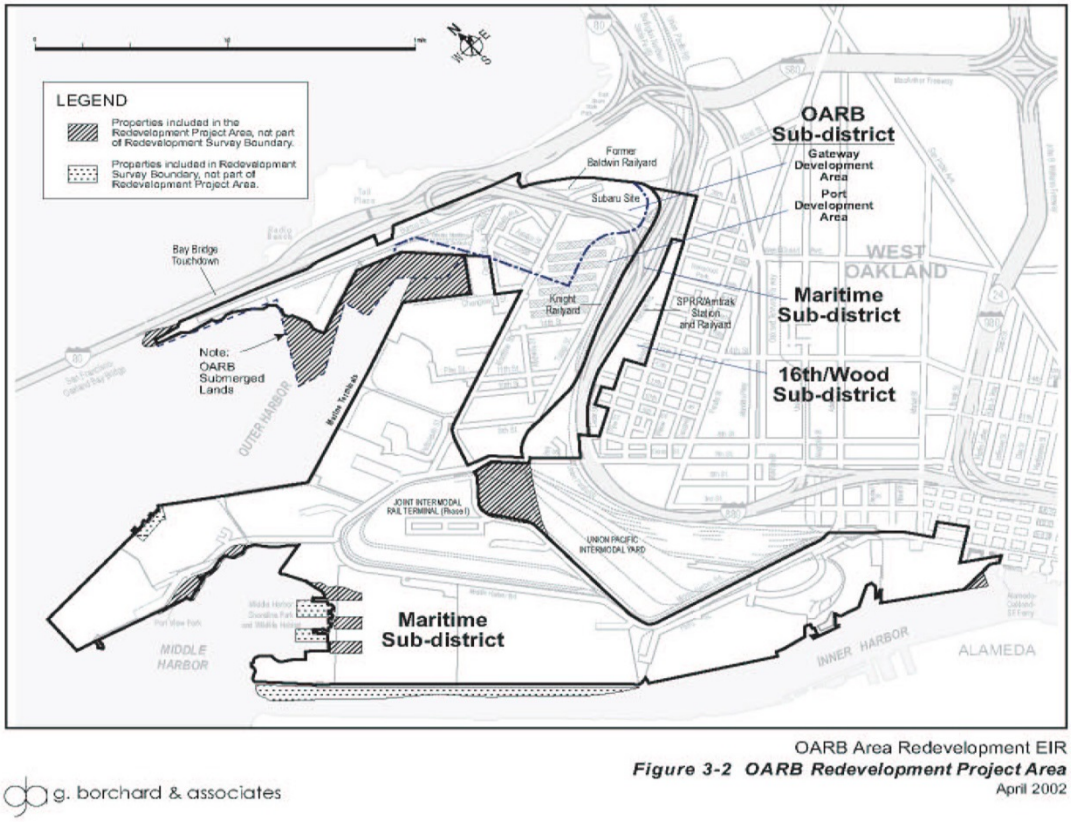

Figure 5 Oakland Army Base Redevelopment Area Sub-Districts, April 2002[52]

In 2002, the City approved a new and more detailed "Oakland Army Base Redevelopment Area Plan" and a supporting Environmental Impact Report (EIR) analyzing the effects of the OAB closure and the City's updated planning proposals for redevelopment on OAB property under the California Environmental Quality Act.[53] According to the City's 2002 approval, the Gateway Development Area would be redeveloped pursuant to a "flexible" alternative land use plan, which specifically contemplated the construction and operation of

[50] *See* LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, pp. 19-20 (May 2012), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak035061.pdf.
[51] *Id*.
[52] City of Oakland, *Oakland Army Base Project: Maps*, *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/image/dowd007621.jpg (last accessed April 4, 2017).
[53] *See* Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, p. 1 (July 31, 2002), *available at* http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829 (last accessed April 3, 2017).

waterfront light-industrial and flexible office space including research and development ("R&D") offices, as well as other "business-serving retail" and "high-end commercial development" spaces like a "Four Star Hotel."[54] While the 2002 plan also included some warehousing and distribution, as well as ancillary maritime support facilities, the majority of land uses specified in the plan consisted of light industrial development, so as to attract businesses focused on industries other than heavy freight industrial activities.[55]

Despite the generally beneficial land-uses considered and approved in the City's 2002 Redevelopment Plan approval, the community was concerned, at the time, that the Plan did not demonstrate an honest commitment by the City to redevelop the OAB in a way that would genuinely benefit surrounding residents in West Oakland. In 2002, the WOCAG issued recommendations in response to the City's EIR and proposed Redevelopment Plan, which expressed the community's concerns with the direction of the City's land use and planning decisions, and its displeasure with the way their recommendations had been treated up to that point. [56] Specifically, the WOCAG explained that the 2002 plan approval and related EIR did not provide enough detail regarding the City's proposed development plans to assure that the OAB redevelopment would confer tangible, direct community benefits. [57]

Just as feared by the community, as both the City and Port continued to receive federal land grants of former OAB land, they began discussions with potential developers seeking to expand Port-related freight activities at OAB, even though the approved Redevelopment Plan designated very limited land for such activities. Notably, these discussions were held while parallel discussions were still taking place among WOCAG members and City staff – thus, while the WOCAG was still developing its input on the OAB development process. [58]

Between 2006 and 2008, WOCAG continued to submit its recommendations to the City. During that time, the WOCAG focused its recommendations on the City prioritizing development proposals that result in less truck traffic through West Oakland, due to health

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[54] Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Section 3.2.1, p. 27 (July 31, 2002), *available at* http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829 (last accessed April 3, 2017).

[55] *Ibid*.; *see also*, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, p. 20, Table 2-1 (May 2012), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak035061.pdf (last accessed April 4, 2017) (comparing the land-use designations approved in 2002, with those considered and ultimately approved by the City a decade later).

[56] George M. Bolton III, West Oakland Community Advisory Group to Scott Gregory, EIR Project Manager, City of Oakland (June 11, 2002) (noting that "it is an insult to the many citizens of the City of Oakland who have given freely of their time and effort to serve the [Oakland Army Base Reuse Authority] and the City of Oakland in the base conversion process [only] to have their efforts ignored and not evaluated in this EIR").

[57] George M. Bolton III, West Oakland Community Advisory Group to Scott Gregory, EIR Project Manager, City of Oakland (June 11, 2002).

[58] West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area*, pp. 4-5 (June 2008).

impacts many residents were already facing due to the Port's growing activity.[59] WOCAG wanted businesses such as truck servicing and truck parking to be relocated out of the community, and to "leave their former sites available for more appropriate, i.e. lower impact commercial use."[60]

Notwithstanding the input received from WOCAG, however, the City continued its discussions with Prologis and CCIG, and began negotiating an agreement with the developers, to build a large-scale warehouse and shipping development project for portions of all three sub-districts created under the City's prior approvals, which became jointly termed, the "Gateway Development Area," pictured in *Figure 6*, below.[61]

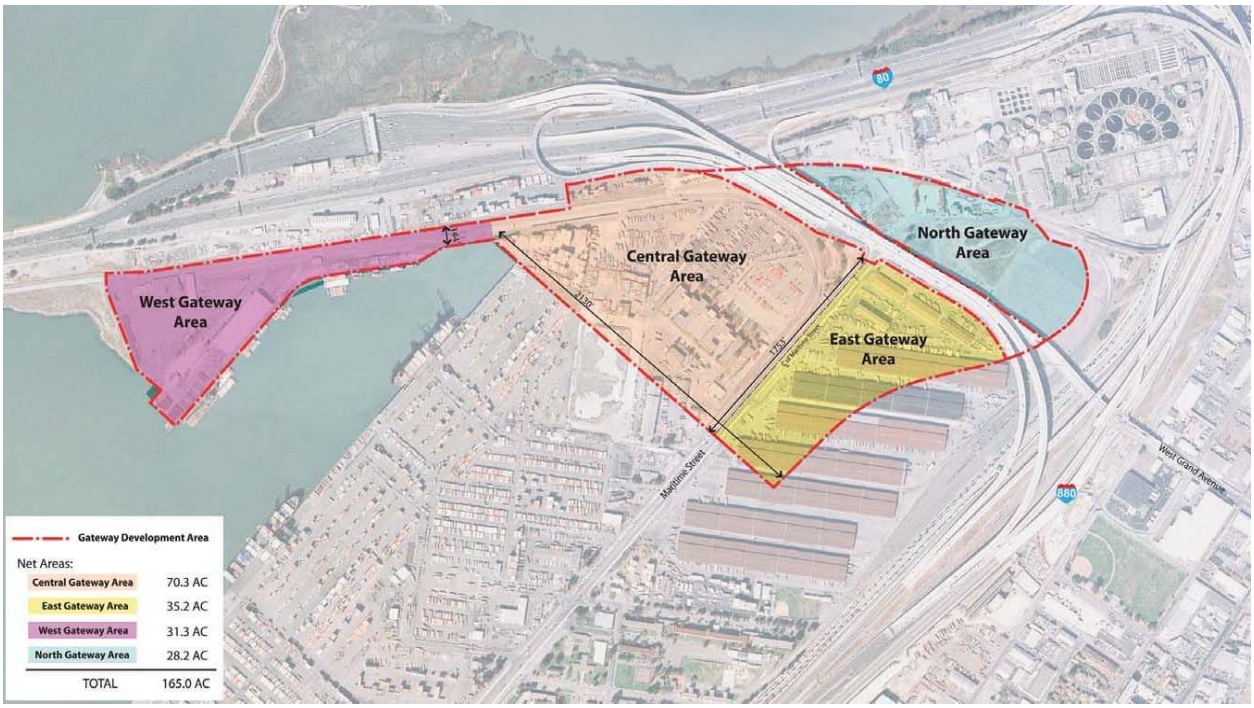

Figure 6 Gateway Development Area.[62]

[59] West Oakland Community Advisory Group, *Re: Army Base-Economic Development* (February 20, 2006); West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area* (June 2008).
[60] West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area*, p. 7 (June 2008).
[61] LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, p. 21 (May 2012), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak035061.pdf (last accessed April 4, 2017) ("in 2009 the joint venture between Prologis and [CCIG] was selected as the master developer").
[62] Oakland Redevelopment Agency, *Pre-Development Planning for the Oakland Army Base Gateway Development Area*, Figure 3-1, *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/dowd007624.pdf (last accessed April 4, 2017).

C. The City's Port Expansion and "Gateway Development", or 'Oakland Global", Approvals

The land uses proposed in the City's 2002 Redevelopment Plan included a "tech park" comprised of R&D office buildings, and light to moderate industrial and retail development including big box retail stores, hotels and a Cineplex.[63] These land uses did not include as the predominant use for the area the type of heavy industrial, large-scale warehouse, shipping, distribution and maritime activity that the City began to consider through its subsequent negotiations with Prologis and CCIG. Yet, in 2012, the same year the City received its $2 million comprehensive TIGER 2 planning grant from DOT, the City approved the "Oakland Army Base: Outer Harbor Terminal Project" and executed an exclusive development agreement with Prologis and CCIG to expand port-related maritime activities at OAB.[64] Rather than conduct a new environmental review, however, the City re-approved its decade-old environmental review document that the City's staff presented to the Council as a mere addendum to the EIR analysis prepared and approved in 2002.[65] Rather than designing new and more appropriate mitigation corresponding to the City's new development proposals, the City also claimed that specific mitigation would be determined at a later date, when specific projects were approved.

To give an example of the drastic deviation the City took from its prior approvals, the City's 2012 Redevelopment Plan for the Outer Harbor Terminal Project involved approximately 2.5 million square feet of warehouse/distribution and maritime-related logistics uses, as compared to only 175,000 square feet of office/R&D, where as its 2002 approvals involved only 300,000 square feet of warehouse and distribution development and approximately 1.5 million square feet of office/R&D. [66]

Unsurprisingly, BAAQMD as well as other agencies including ARB, as well as West Oakland residents expressed their concern with the City's proposed "Outer Harbor Terminal Project," which soon simply became known as the Gateway or Oakland Global Logistics Center development project. BAAQMD in particular encouraged the City to analyze how its new development plans would impact future residents near new and existing sources of pollution, and

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[63] *See*, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Attachment B, p. 4 (May 2012), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak035061.pdf (last accessed April 4, 2017) (summarizing the differences between the 2012 project, and the project analyzed and approved in 2002).

[64] *See*, Development Agreement By and Between the City of Oakland and Rpologis CCIG Oakland Global LLC, Regarding the Property and Project Known as "Gateways Development/Oakland Global, dated July 16, 2013, available at: http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak055211.pdf (last accessed, March 30, 2017).

[65] *See, ibid*. ("The primary difference between the 2012 Project and what was proposed for the same geographic location in the 2002 Project is a shift from office R&D to a greater amount of warehouse distribution and maritime logistics uses as the predominant use.")

[66] *See*, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, p. 4 (May 2012), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak035061.pdf (last accessed April 4, 2017) (summarizing the differences between the 2012 project, and the project analyzed and approved in 2002).

provided specific suggestions for doing so.[67] But the City refused to conduct an additional impact analysis, again claiming that it was appropriate to defer any such analysis to a later time, and a later approval.[68]

On December 4, 2013, the City approved an "Army-Base Construction-Related Air Quality Plan," purporting to address construction related impacts but again declining to analyze or mitigate impacts from the long-term operation of the Gateway development projects, or the cumulative construction and operation of the related additional Gateway development projects. The City again received letters from BAAQMD and other agencies, identifying shortcomings in the City's proposed mitigation set forth in the "Construction-Related Air Quality Plan."[69] The City again refused to incorporate the types of analysis or mitigation suggested by the agencies.

Most recently, on October 4, 2016, the City approved an additional Northeast Gateway construction management plan allowing Prologis and CCIG to begin construction at the Northeast Gateway site on November 1, 2016, and to eventually operate a global trade and logistics complex that is worlds different than what the City proposed and approved in its initial land use decisions relating to the OAB, and greater "Redevelopment Area." After the City approved this most recent construction management plan, Prologis issued three "45-day notices" in the month of February, 2017, which relate to three additional air quality plans currently under review by the City: (1) an operations air quality plan for the Northeast Gateway project, which was issued on February 2, 2017; (2) a "Construction and Operations" air quality plan, for the Southeast and Central Gateway Projects, issued on February 3, 2017; and (3) a "Phase 3 Construction" air quality plan, issued on February 9, 2017. To this day, neither the City nor Port has updated the cumulative air quality analysis to analyze or mitigate, in a meaningful manner, the ongoing air pollutant emissions from the construction and operation of the full Gateway, or Oakland Global Logistics Center development project.

IV. LEGAL BACKGROUND

DOT regulations implementing Title VI state that "[n]o person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies." 49 C.F.R. § 21.5(a).

These regulations also include the following prohibitions of specific discriminatory acts by recipients of federal funds:

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[67] Jean Roggenkamp, Bay Area Air Quality Management District to Ulla-Britt Jonsson, City of Oakland, *Subject: West Oakland Specific Plan Notice of Preparation of a Draft Environmental Impact Report* (November 21, 2012).
[68] *See* City of Oakland, *West Oakland Specific Plan: Final Environmental Impact Report*, pp. 4-21 to 4-22 (May 2014).
[69] *See*, *generally*, Rachel Flynn, Director, Department of Planning and Building to Deanna J. Santana, City Administrator, *Subject: Approval of Army Base Construction-Related Air Plan* (December 4, 2013), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak044541.pdf (last accessed April 4, 2017).

> (2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program. . . may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.
>
> (3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

49 C.F.R. § 21.5(b).

> A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

49 C.F.R. § 21.5(d).

EPA regulations implementing Title VI state that "[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, [or] national origin[.]" 40 C.F.R. § 7.30. The regulations also provide a non-exclusive list of specific, prohibited discriminatory acts:

> (b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.
>
> (c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

40 C.F.R. § 7.35.

These regulations make clear that discrimination on the basis of race is a violation of Title VI whether it is the purpose of the decision or its effect. 49 C.F.R. § 21.5(d); 40 C.F.R. § 7.35(c).

V. VIOLATIONS OF TITLE VI

A. Discriminatory Acts

The City's approval of the Northeast Gateway Construction Management Plan on October 4, 2016 is the latest example of the City and Port's discriminatory actions regarding the development and expansion of harmful freight activities at the Port and OAB. The approval is part of a continuing pattern of actions utilizing criteria and methods that have the purpose or effect of subjecting the surrounding community of color to the disproportionate externalities of that freight activity.

Since 2012, the City, in particular, has sought to abandon the original commitment to develop the OAB in a way that would benefit the surrounding community. While the WOCAG was asked to provide input on recommendations for development early in the OAB Redevelopment process, the City proceeded with its own negotiations to expand freight-related activities notwithstanding the community recommendations, and notwithstanding the fact that such activities would add to the impacts on the already overburdened surrounding communities of color. The City has also consistently refused to consider the input of advisory and stakeholder groups including the WOCAG, who urged the City to prioritize development proposals that would result in less truck traffic through West Oakland.[70] At each step of the way, the City has declined to analyze the impacts of expanded freight activities, and has declined to adopt specific mitigation by claiming that such analysis and mitigations were not required or that they would be addressed at a later point.

Since the abrupt change in the proposed OAB redevelopment plan in 2012, the community and concerned agencies have been demanding analysis of the impacts, and assurances that the effects of expanding freight activities will be mitigated. At each step, the City has declined to do any more than assure that the project will comply with existing minimum regulatory requirements.

In 2013, BAAQMD wrote to the City to highlight the City's lax mitigation measures for the OAB redevelopment project, pointing out that the City's plan for reducing construction emissions from the OAB included mitigation measures with easy loopholes for industry. The plan required lower-emitting equipment to the extent that it was "readily available" in the Bay

[70] West Oakland Community Advisory Group, *Re: Army Base-Economic Development* (February 20, 2006); West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area* (June 2008).

Area.[71] The BAAQMD noted that "the Plan does not include any guidance on how it will be determined if the equipment is 'readily available' or 'cost effective.'"[72] BAAQMD concluded its letter with a list of specific recommended requirements for all OAB construction activity. But the City declined to make any of the recommended changes.

In 2014, both BAAQMD and the Alameda County Public Health Department submitted letters raising new concerns with the City's planning activities. The Alameda County Public Health Department's letter urged the City to strengthen the proposed mitigation measures, because "[impacts from development at the Port and OAB] will further exacerbate existing health conditions in West Oakland."[73] BAAQMD contacted the City's Strategic Planning Division to recommend additional air quality controls, noting that the West Oakland community experiences a higher cancer risk than any other Bay Area community and compliance with minimum regulatory requirements will not be sufficient to reduce health risks in the community to a safe level.[74] Again, the City took no action.

In 2015, BAAQMD expressed concern about the Port's and the City's continued reliance on the environmental review conducted in 2002, and re-approved in 2012 as a basis for the continued expansion of port-related infrastructure development at OAB. Among other concerns, BAAQMD expressed serious trepidation regarding the facts that both the 2002 and 2012 reports were based on outdated national ambient air quality standards for fine particulate matter emissions. [75] In addition, the air quality analysis provided in the City's subsequent air quality management plan analyses only considered construction emissions, and not the long-term impacts from continued development at the Port and OAB.[76]

Most recently, in 2016, BAAQMD, ARB and WOEIP all submitted comments on the Northeast Gateway Construction Management Plan. In a letter addressed to the City, dated June 3, 2016, BAAQMD expressed its concern that, again, the City's proposed management plan exclusively dealt with the air quality impacts associated with construction, and failed to consider the long-term air quality impacts that would result from the project. BAAQMD also complained that even within its limited scope, the plan did not include air quality mitigation measures

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[71] Jean Roggenkamp, Bay Area Air Quality Management District to Alisa Shen, City of Oakland, *Subject: Comments on the Oakland Army Base Draft Mitigation Monitoring and Reporting Program (MMRP) Project Manual – Components for Complying With Construction Related Air Quality Requirements (Plan)* (July 22, 2013).
[72] Jean Roggenkamp, Bay Area Air Quality Management District to Alisa Shen, City of Oakland, *Subject: Comments on the Oakland Army Base Draft Mitigation Monitoring and Reporting Program (MMRP) Project Manual – Components for Complying With Construction Related Air Quality Requirements (Plan)* (July 22, 2013).
[73] Muntu Davis, Alameda County Health Care Services Agency, Public Health Department to Ulla-Britt Jonsson, City of Oakland, *Subject: Re: West Oakland Specific Plan Draft Environmental Impact Report and Public Health* (March 17, 2014).
[74] Jean Roggenkamp, Bay Area Air Quality Management District to Ulla-Britt Jonsson, City of Oakland, *Subject: Draft Environmental Impact Report for the West Oakland Specific Plan* (March 20, 2014).
[75] Jean Roggenkamp, Bay Area Air Quality Management District to Tim Leong, Port of Oakland, *Subject: Roundhouse Area Improvements Project Initial Study/Negative Declaration* (June 24, 2015).
[76] Jean Roggenkamp, Bay Area Air Quality Management District to Tim Leong, Port of Oakland, *Subject: Roundhouse Area Improvements Project Initial Study/Negative Declaration* (June 24, 2015).

necessary to protect health.[77] ARB's letter similarly detailed recommendations for additional mitigation measures that ARB described as "critical to reducing emissions and protecting public health." WOEIP also urged the City to commit to mitigation to address the adverse impacts its approval would have on the surrounding community. These included installing solar panels on warehouses that will be constructed as part of the Gateway project development, and requiring zero-emission technologies for short-haul trucks, including drayage trucks, and cargo handling equipment.[78] Despite the fact that the mitigation measures requested were consistent with the City's minimal mitigation measures approved in 2002, the City declined to include any of the recommended mitigation.

This history of rejecting recommended mitigation is the product of a piecemealed process that denies meaningful public participation by narrowing the scope of the issues that will be considered at each step of the development approvals. When WOEIP raised concerns about the lack of zero-emission technology requirements for the Northeast Gateway project, and the failure to create an emission reduction plan for the development, [79] Prologis, the developer of the Northeast Gateway/Global Logistics Center project, argued that these concerns were not appropriate for the air quality plan under consideration, and that they could be raised when the Air Quality Operations Plan is developed.[80] As a result, the City Administrator dismissed the community concerns in the approved plan.[81] All involved in these approvals, however, know that the opportunities to mitigate emissions from operations will be limited by the physical projects that have been built as a result of the October 4, 2016 approval.

The October 4, 2016 approval demonstrates that the City's promise of future analysis and mitigation are empty. It is not sufficient to consider mitigation after construction is complete because mitigation must be designed into the project, prior to its construction. The October 4, 2016 approval, and subsequent initiation of construction at the Northeast Gateway site show that the City intends to allow development that will disproportionately impact the surrounding communities of color without mitigation. Whether purposeful or just in effect, the City's October 4, 2016 approval denied the benefits of redevelopment investments to the surrounding communities of color. This decision, like the various decisions that have preceded it, was made with the clear intention to streamline approval of expanded freight activities by setting up a process that precluded meaningful public participation. The decision also avoided mitigation requirements that would minimize or prevent impacts on the surrounding communities of color.

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[77] Jean Roggenkamp, Bay Area Air Quality Management District to Darin Ranelletti, City of Oakland, *Subject: Northeast Gateway Construction Management Plan* (June 3, 2016).
[78] Heather Arias, California Air Resources Board to Darin Ranelletti, City of Oakland (May 31, 2016).
[79] Margaret Gordon, West Oakland Environmental Indicators Project to Darin Ranelletti, City of Oakland Bureau of Planning, *Subject: Comments Standard Conditions of Approval/Mitigation Measures for the Prologtis* [sic] (May 23, 2016); Ditching Dirty Diesel Collaborative to Robbie Morris, California Air Resources Board (May 25, 2016).
[80] Cory Chung, Development Manager, Prologis to Darin Ranelletti, City of Oakland Bureau of Planning, *Subject: RE: DRX151553 – Oakland Global Logistics Center #1 – Response to Air Quality Stakeholder Comments to SCA-MMRP Public Outreach Element (Mitigation Measure PO-1)* (August 30, 2016).
[81] Rachel Flynn, Director, Planning and Building Department to Sabrina B. Landreth, City Administrator, *Subject: Construction-Related Air Quality Plan by Prologis for Northeast Gateway at Army Base site,* p. 4 (September 8, 2016).

The City's October 4, 2016 approval is, moreover, a single component of the City's and Port's continuous, systemic pattern of approving, or directly engaging in, the expansion of port-related infrastructure development. This pattern will continue as the City and Port pursue their expansion goals in the OAB Gateway/Oakland Global Logistics Center development. This pattern of conduct results in direct and immediate adverse effects on West Oakland residents who are predominantly people of color, and therefore violates Title VI of the Civil Right Act of 1964.

B. Adverse Impacts

As outlined above, freight activity in and around the West Oakland community is responsible for a host of adverse impacts including elevated cancer risks, higher rates of asthma attacks, and disruption of the basic quality of life in the community.[82] The October 4, 2016 approval of the Northeast Gateway construction-related air quality plan and the City's ongoing approvals of the construction and operations of the full OAB Gateway/Oakland Global Logistics Center development area will add to the already adverse impacts suffered by the surrounding community as a result of freight activities. The October 4, 2016 approval was the first approval of one of several components to the Oakland Global Logistics Center project. This approval provided the City with an opportunity to ensure that the project was designed, and would be built in a way to limit impacts on the surrounding community, but the City refused to ensure that adequate health and safety protections were in place before allowing the developers to break ground on November 1, 2016.

In its 2008 Health Risk Assessment, ARB found that on-road heavy duty diesel trucks were the largest source of cancer risk in the community, followed by ocean going vehicles, harbor craft, locomotives, and cargo handling equipment.[83] All of these sources are associated with the Port's, and now with the OAB's, expanded activities.

While ARB's assessment indicated that emissions would decrease in the future as a result of regulatory actions, the assessment estimated that even after emissions reductions, "the remaining cancer risk will [still] be greater than 200 in a million in the West Oakland community," and that any reduction in emissions would not resolve the disparate impacts that West Oakland residents face when compared to residents living elsewhere throughout the City or the County.[84] ARB's assessment recommended "collective and innovative efforts" at all levels of government to reduce emissions and improve health outcomes in West Oakland, including a

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[82] Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), *available at* https://ww2 kqed.org/news/air-pollution-dispute-west-oakland-army-base/ (last accessed March 31, 2017); Katy Murphy, *Pollution takes heavy toll on Bay Area children with asthma*, The Mercury News (February 9, 2013), *available at* http://www.mercurynews.com/2013/02/09/pollution-takes-heavy-toll-on-bay-area-children-with-asthma/ (last accessed March 31, 2017).

[83] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2 (December 2008).

[84] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 4 (December 2008).

transition to clean technologies.[85] The City's approval of the Northeast Gateway Construction Management Plan, however, fails to provide any innovative or good faith effort to reduce emissions at and around the project. The City's approval does the opposite by rubber stamping the construction and operation of new large-scale port related infrastructure that will only exacerbate the existing pollution burdens West Oakland residents face.

The Alameda County Public Health Department urged the City to require a more comprehensive evaluation of, and mitigation for, the Northeast Gateway Project's increase in diesel emissions, which are also a major concern given the existing health burdens in West Oakland. Yet the City, as always, refused to adhere to the County Public Health Department's recommendations, and instead chose to adhere to its construction-only approval decision.

C. Disproportionality

The October 4, 2016 approval of the Northeast Gateway construction-related air quality plan is the latest action by the City and Port to push through more freight-related development that already disproportionately impacts the communities of color in West Oakland. The Alameda County Public Health Department has found that racial disparities impact health outcomes throughout the county, and especially in West Oakland.[86] People of color are more likely to experience the negative health outcomes detailed above. As described by the Alameda County Public Health Department, "even at the same rung, African Americans typically have worse health and die sooner than their White counterparts. In many cases, so do other populations of color."[87]

As described above, West Oakland residents are also more likely to face decades of persistent poverty. Black people in Oakland are far more likely to be homeless than any other ethnic group.[88] These same factors are at play within West Oakland, a community that is predominantly populated by people of color. West Oakland faces higher rates of illness, crime, and higher death rates than predominantly White communities in Oakland. Residents of West Oakland face stresses that residents of other communities may never endure.

In recent years, various Bay Area media outlets have published heartbreaking stories of West Oakland residents who fear for their children's lives due to air pollution that triggers

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[85] California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, pp. 4-6 (December 2008).

[86] *See* Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County – Executive Summary* (2008); UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, p. ES-2 (March 2010), *available at* http://www.acphd.org/media/53628/unnatcs2008.pdf (last accessed April 4, 2017).

[87] Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County*, pp. 7-8 (2008), *available at* http://www.acphd.org/media/53628/unnatcs2008.pdf (last accessed April 4, 2017).

[88] Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County*, p. 71, Figure 33 (2008), *available at* http://www.acphd.org/media/53628/unnatcs2008.pdf (last accessed April 4, 2017).

possibly fatal asthma attacks.[89] These media reports, as well as anecdotal reports that have been relayed to WOEIP staff, describe parents making the difficult decision to uproot their lives in West Oakland and move to communities that are less polluted and less disrupted by truck traffic.[90] People want to build communities that allow them to connect with their neighbors, to enjoy parks, and to send their children to play outside. The land gifts of the former OAB properties along with multiple federal grants were intended to spur redevelopment that would benefit the surrounding communities. Instead, the City and Port have decided to "double-down" on the harmful activities that created the current conditions in West Oakland. The City and Port have manipulated their decision-making processes to prevent public participation and avoid costly mitigation investments that might interfere with such development. The October 4, 2016 approval is the latest in a string of decisions that, in purpose or effect, are destroying the vision of a sustainable and healthy West Oakland that residents want to see, and forcing those residents, mostly people of color, to either bear the disproportionate burdens or pack up and move elsewhere.

D. Less Discriminatory Alternatives

Throughout the various actions outlined above, the City and Port have declined to accept recommendations from either the community or expert agencies on process, analysis, and mitigations. The following less discriminatory alternatives were available, and continue to be available to both the City and Port:

1. The City and Port have the option and opportunity, but have continuously refused, to engage the community in a meaningful process by which to receive and incorporate their input, including their opposition to the Gateway and Oakland Global Logistics Center development proposals, and the continued expansion of the Port's activities.

   Specifically, the City has the opportunity, but has refused, to send notifications regarding each of its piecemealed construction and operation related approvals to all neighborhood residents. The City has also failed to provide clear and consistent opportunities for neighboring residents to provide their input regarding the City's process for ensuring that the immediate community health and safety concerns from its development approvals are addressed.

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[89] Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), *available at* https://ww2 kqed.org/news/air-pollution-dispute-west-oakland-army-base/ (last accessed March 31, 2017); Katy Murphy, *Pollution takes heavy toll on Bay Area children with asthma*, The Mercury News (February 9, 2013), *available at* http://www.mercurynews.com/2013/02/09/pollution-takes-heavy-toll-on-bay-area-children-with-asthma/ (last accessed March 31, 2017).

[90] Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), *available at* https://ww2 kqed.org/news/air-pollution-dispute-west-oakland-army-base/; *See also* City of Oakland, *West Oakland Specific Plan: Final Environmental Impact Report*, p. 4-6 (May 2014), *available at* http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak049140.pdf (last accessed April 4, 2017) ("While West Oakland's population has increased by nearly 2,000 people between 1990 and 2010 (at a rapid rate of 15%), the African American population of West Oakland has declined by nearly 5,000 people during the same time period.").

The City and Port also have the opportunity, but have refused, to post project-related approval documents at the various community organizations, institutions and gathering places around West Oakland, including but not limited to: the West Oakland Senior Center, city libraries, the West Oakland Youth Center and the Hoover Resident Action Council. The City has also refused to require the developers, Prologis/CCIG, to do the same.

The City has also consistently refused, despite being urged by various state, local, county and federal agencies, to convene a transparent interagency and community inclusive process by which to develop and implement a comprehensive assessment of the impacts caused by its land-use and development decisions at the Port and OAB and to both established and implement an updated mitigation, monitoring and reporting program that considers the level and extent of the full Gateway and Oakland Global Logistics Center and expanded Port operations.

2. The City has the option, but refuses, to consider the effects of the full operation of the Prologis and CCIG development of all three Gateway sub-areas prior to issuing its piecemealed approvals. The City and Port also have the option to update their analysis of impacts instead of relying on the outdated 2002 analyses for a redevelopment plan that was drastically different than the current development plans and approvals before the City.

3. The City and Port have had numerous opportunities, but have refused, to develop, or require the development of, a meaningful emissions reduction plan based on an accurate and updated assessment of the current and foreseeable levels of increased freight transport and other heavy infrastructure, maritime, shipping, distribution, storage and Port-related activities occurring at and along the Port and OAB including increases in rail and maritime emissions that are inconsistent with existing rail and maritime emission reduction standards.

4. The City and Port have had the option, but have failed, to produce or, at a minimum, require, a comprehensive truck management plan to address impacts from growing freight activities on the community of West Oakland.[91]

   Specifically, both the City and Port have had the opportunity to, but have refused, to develop any requirements for zero-emission technologies at OAB or the Port, which would alleviate some of the air pollution impacts of additional truck traffic in and near West Oakland neighborhoods. They have also refused to require stricter limits (e.g. two minute limits) on diesel truck idling times to address existing health burdens affecting West Oakland residents, and in particular school children throughout West Oakland.

[91] The Port's approval a drayage truck management plan for the Port fails to address the impacts that increased truck traffic has on the Port-*adjacent* roadways and trick traffic problems on off-Port property, e.g., the West Oakland community.

The City and Port also have the opportunity but refuse to require plug-in infrastructure as a design feature of all construction, for the Gateway and Oakland Global Logistics Center development to minimize emissions specifically caused by highly polluting refrigerated truck units serving the new Gateway developments.

The City and Port have also had the opportunity, but have refused, to engage in the planning, implementation and enforcement of Truck hauling routes that are designed to minimize community exposures to emissions, fugitive dust, potential hazardous materials, vibrations and traffic safety issues.

Both the City and Port have had the opportunity, but have refused, to enforce parking restrictions throughout the West Oakland residential community. The City has similarly refused to develop or require an enforceable West Oakland Truck Route as a part of its approved construction management Plan for the Northeast Gateway project, or as part of its ongoing approvals for the larger Gateway or Oakland Global Logistics Center project.

Both the City and Port have also had numerous opportunities, but have refused, to accept or apply for additional funding to support targeted emission reduction efforts at the Port, OAB and throughout West Oakland.

5. In large part due to their failure to require either a comprehensive truck management plan, or a meaningful emission reduction plan, both the City and Port have similarly refused to mitigate the negative air quality and resulting health impacts or other disruptions and adverse effects on the quality of life of West Oakland residents, caused by the continued increase in truck traffic to and from the Port and the OAB Gateway/Oakland Global Logistics Center properties.

VI. Relief

Complainant requests that the DOT Departmental Office of Civil Rights and the EPA Office of Civil Rights accept this complaint and investigate whether the City and Port have violated Title VI of the Civil Rights Act and its implementing regulations, and indeed whether they continue to violate Title VI of the Civil Rights Act.

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Complainant further requests that the City and Port be brought into compliance by: (a) requiring the City to withdraw its approvals of the Gateway construction management plans unless and until the City conducts a full review of the construction and long-term operation of all of the Gateway areas, and unless and until the City engages the surrounding community in a meaningful process by which to incorporate their input into new mitigation measures, emission controls, and conditions of approval for the development of the Gateway projects; (b) requiring the Port to coordinate with the City to develop a truly comprehensive truck management and Port emission reduction plan; and (c) Conditioning all future grants and awards from both EPA and DOT to both the City and Port on adequate assurances that the actions of both recipients will comply with Title VI as detailed above.

Sincerely,

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